
(2018) 05 UK CK 0100

In the Uttarakhand High Court

Case No : Civil Misc. Application No.572 of 2015

SMT. RAUNAK JAHA AND OTHERS

APPELLANT

Vs

STATE OF UTTARAKHAND AND ANOTHER

RESPONDENT

Date of Decision : 21-05-2018

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 420, 467, 468, 471
Code of Criminal Procedure, 1973 — Section 482

Citation : (2018) 05 UK CK 0100

Hon'ble Judges : LOK PAL SINGH, J

Bench : Single Bench

Advocate : Gaurav Singh, S.K. Chaudhary, Sudhir Kumar,

Final Decision : Dismissed

Judgement

1. By means of present C-482 application, applicants have sought quashing of impugned charge sheet as well as cognizance order dated 10.10.2014

passed by Chief Judicial Magistrate Haridwar in case no.9249 of 2014 State vs. Raunak Jaha and others u/s 420, 467, 468, 471, 120-B of IPC,

P.S. Jwalapur, District Haridwar, pending in the court of Chief Judicial Magistrate, Haridwar.

2. Brief facts of the case are that Tahir Hussain was the owner of the property in suit. Mohd. Affan was the tenant in the property in dispute. Tahir

Hussain filed a suit being SCC suit no.21 of 1989 Tahir Husain vs. Mohd. Affan for eviction of Mohd. Affan, father-in-law of applicant no.1. Suit was

decreed by judgment and decree dated 19.08.1991, against which Mohd. Affan filed a revision, which was also dismissed. Thereafter, Mohd. Affan

filed a writ petition before the Allahabad High Court, which was transferred to this High Court. Writ petition was also dismissed on 26.06.2004. Thus,

the judgment and decree passed in SCC suit no.21 of 1989 has become final. In the meantime, Tahir Hussain who filed the suit for eviction, died on 18.03.1992, leaving behind his wife Smt. Saida, who also died on 10.02.1999. According to respondent no.2, during her lifetime Smt. Saida had wafq the property in dispute in favour of a mosque. In the year 2009, applicant no.1 Smt. Raunak Jaha filed a suit being original suit no.243 of 2009 for a decree of declaration against the public at large in the court of Civil Judge (S.D.), Haridwar on the ground that Late Tahir Hassan had made an oral gift of the property in dispute in her favour and memorandum of oral gift to this effect was written on 1.1.1998. By ex-parte judgment and decree dated 25.03.2011, suit was decreed. When it came to the notice of respondent no.2., nephew of Late Smt. Saida, he lodged an F.I.R. against the applicants for the offences punishable under Section 420, 467, 468, 471, 120-B of IPC with the allegations that hibenama dated 01.01.1993 is a forged document and has been procured in order to grab the property in dispute. Investigating Officer, upon completion of investigation, submitted charge sheet against the applicants. On receipt of charge sheet, Chief Judicial Magistrate took cognizance in the matter and passed the impugned summoning order dated 10.10.2014.

3. Counter affidavit has been filed by respondent no.2, wherein entire facts have been narrated, whether it is regarding filing of SCC suit by the owner

Late Tahir Hussain for ejection, or the revision filed by the tenant Mohd. Affan or dismissal of the writ petition. No rejoinder affidavit has been filed

by the applicants to rebut the averments made in the counter affidavit.Â

4. Mr. Gaurav Singh, learned counsel for the applicants would submit that the learned Magistrate has passed the summoning order in a cyclostyle

manner, without applying his judicial mind.Â

5. On the other hand, Mr. Sudhir Kumar, learned counsel for respondent no.2 vehemently opposed the submission of the learned counsel for the

applicants and submitted that after completion of the entire investigation the I.O. has submitted the chargesheet against the applicants and summoning

order has been passed by the concerned Magistrate after considering the material on record.Â

6. I have heard learned counsel for the parties and perused the entire material available on file.Â

7. From the perusal of impugned summoning order, it would reveal that the learned Magistrate has taken cognizance of the offence on the basis of

charge sheet and has thereafter summoned the accused. Impugned summoning order would itself reveal that learned Magistrate, before passing the

order, perused the case diary as well as the material available on record. While taking cognizance in the matter, learned Magistrate, has passed the

following order:

^^vkt dh frfFk ij vkjksi= U;k;ky; ds le{k izLrqr fd;k x;k A U;k;ky; ds }kjk vkjksii= rFkk dsl Mk;jh o dsl Mk;jh esa vafdr lk{kxh.kka ds c;kuksa o

vfHkys[kxr lkexzh dk voyksdu fd;k x;kA vfHkys[k ij miyC/k vfHkys[kxr lkexzh ds lE;d voyksdu ds mijkUr U;k;ky; }kjk foi{kxh; vfHk;qDrx.k jkSud

tgÂik eks ;kâ??khu fo:} vUrxZr /kkjk 420 467 468 471 120 B IPC d vijk/k dk izlaKku fy;k tkrk gSA ntZ jftLVj gksos rFkk QkStnkjh okn vUrxZr 207 n-

iz- l- ds vUrxZr ;Fkkâ?kh?kz vfHk;kstu izi=ksa dh udysa rS;kj fd;k vfHkys[k ij layXu fd;k tkuk lqfufâ?pr djsa o fu;r frfFk ij mifLFkfr gsrq foi{kxh.k @

vfHk;qDrx.k dks leu izsfâ??kr gks i=koyh fnukad 12-11-14 dks isâ??k gksA^^

8. In the light of aforesaid, I am of the view that the summoning order does not suffers from any perversity or illegality. Present application u/s 482

Cr.P.C. is devoid of merit and the same is hereby dismissed.Â

9. Interim order dated 19.05.2015 is hereby vacated.Â

10. No order as to costs.