
(2011) 11 UK CK 0083

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 411 of 2007

Smt. Rishipal Kaur and another

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 28-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1), 146, 146(1), 482

Citation : (2011) 11 UK CK 0083

Hon'ble Judges : Servesesh Kumar Gupta, J

Bench : Single Bench

Judgement

Hon"ble Servesesh Kumar Gupta, J.—By way of this criminal misc. application moved u/s 482 Cr.P.C., the prayer has been made to quash the order passed by Sub Divisional Magistrate, Ramnagar on dated 19.06.2007 and then after, order of attachment passed u/s 146(1) Cr.P.C. dated 26.06.2007. The basis of controversy between Rishipal Kaur and her husband Amrik Singh on the one hand while Inderjeet Singh Grewal on the other hand, is a hotel namely Swarn Hotel near Basant Bihar Colony in Ramnagar, District Nainital. This Hotel was owned by Rishipal Kaur and was entrusted to Inderjeet Singh Grewal under unregistered lease agreement executed on dated 12.09.2006. This agreement was stamped by Notary. Several terms including lease rent and period of lease was mentioned in the agreement. This agreement came into effect since 02.10.2006 for next five years and advance of lease rent amounting to Rs. 75,000/- was given to Rishipal Kaur by Inderjeet Singh Grewal.

2. Somehow differences cropped up between lessor and lessee. Inderjeet Singh Grewal was allegedly dispossessed by Rishipal Kaur and her husband Amrik Singh on 02.04.2007 from Hotel. So Inderjeet Singh Grewal moved an application on 04.04.2007 to the Sub Divisional Magistrate u/s 145 Cr.P.C. Sub Divisional Magistrate directed SHO, Ramnagar to inquire into the matter. The inquiry report was forwarded by SHO, Ramnagar on dated 11.04.2007 with the opinion that the property in question should be attached u/s 146 Cr.P.C.. The

police also expressed its opinion that there is some dispute between Amrik Singh and Inderjeet Singh Grewal over the payment of electricity bill, telephone bill and other kinds of bills pertaining to that hotel so there is an apprehension of breach of peace at the spot. Learned Magistrate pursuant to the report forwarded by police made an order u/s 145(1) Cr.P.C. on 17.05.2007 asking both the parties to appear on 26.05.2007 for producing their respective evidence.

3. The dates were fixed in the court of SDM, Ramnagar and on 26.06.2007, learned Magistrate attached the hotel in question and given it in the custody of SHO Ramnagar. Orders of Magistrate dated 19.06.2007 and 26.06.2007 were challenged through this petition, which were stayed by this Court on 28.06.2007, so this way hotel in question is still in possession of Rishipal Kaur and her husband Amrik Singh.

4. It has been contended on behalf of learned counsel for the petitioners that civil suit no. 18 of 2007 was filed by Inderjeet Singh Grewal on 07.04.2007 seeking mandatory injunction against Rishipal Kaur to handover the possession of Hotel to him. But that suit was dismissed on 28.04.2007. This argument advanced by learned counsel for the petitioners is of no avail because firstly, the suit was not dismissed on merits. But the same was dismissed due to lack of pecuniary jurisdiction to the court. Secondly, the suit was dismissed much before the presentation of this petition by the petitioners on 27.06.2007 while in paragraph 8 of the petition, this fact has not been disclosed and it renders an impression as if the civil suit filed by Inderjeet Singh Grewal was pending before the civil court before the initiation of proceedings u/s 145 Cr.P.C. This way the paragraph 8 of the petition is wrong informative.

5. It has also been argued on behalf of petitioner's counsel that on 26.06.2007 when the learned Magistrate passed order u/s 146(1) Cr.P.C., Rishipal Kaur moved an application for her impleadment in the case but the learned Magistrate refrained from passing any order upon her application and proceeded to pass impugned order. This order is also not of much relevance because Rishipal Kaur is septuagenarian lady and she is residing with her husband Amrik Singh every time in that very premises and for all practical purposes, Amrik Singh is looking after the entire affairs.

6. Now, the most crucial aspect of the controversy is that who was in possession of the premises in dispute just before two months from the date 04.04.2007 on which information was given to the Magistrate that Inderjeet Singh Grewal has been dispossessed from property in question. Answer is certainly in favour of Inderjeet Singh Grewal, which is ratified by report of the police and also from the agreement dated 12.09.2006, which came in effect 02.10.2006, Inderjeet Singh Grewal was given possession of Hotel in question since then he was running that Hotel in the market.

7. Learned Magistrate passed impugned order dated 26.06.2007 without taking any evidence on record and accepted the police report of dated 11.04.2007 so

this order is not sustainable and liable to be quashed. Both the impugned order dated 19.06.2007 and 26.06.2007 are hereby quashed. It is made clear that since lease term has been completed, hence, the only remedy which Inderjeet Singh Grewal left with, is to claim damages from Rishipal Kaur asking her to reap the loss, which he has suffered.

8. With the above observation, the petition is disposed of.