

(2010) 09 UK CK 0157

In the Uttarakhand High Court

Case No : Delay Condonation Application No. 1013 of 2010 and Restoration Application No. 766 of 2010 in Criminal Misc., Application No. 207 of 2007

Smt. Suman and Others

APPELLANT

Vs

State of Uttarakhand and Another

RESPONDENT

Date of Decision : 22-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 203, 482
Penal Code, 1860 (IPC) — Section 323, 504, 506

Citation : (2010) 09 UK CK 0157

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dharam Veer, J.—Mr. Manoj Bisht, Adv. i/b Mr. A.V. Pundir, Advocate for the applicants.

2. Mr. Amit Bhatt, Addl. GA for the State.

3. Mr. Manish Arora, Advocate for respondent No. 2.

4. This is Delay Condonation Application No. 1013/2010 for condonation of delay in moving the restoration application No. 766/2010 for restoration of the petition u/s 482 Cr.P.C., which was dismissed for non-prosecution on 26.7.2010.

5. For the reasons stated, the delay condonation application is allowed. Delay in filing the restoration application No. 766/2010 is condoned.

6. Also heard on restoration application.

7. The ground for absence on the date fixed by the Court is sufficiently explained in the affidavit accompanying the restoration application.

8. The restoration application is allowed. The application u/s 482 Cr.P.C. stands

restored to its original number.

9. Heard.

10. By means of this petition, moved u/s 482 of The Code of Criminal Procedure, 1973 (for short Cr.P.C.), the petitioner/applicant has sought quashing of the summoning/cognizance order dated 2.3.2007 under Sections 323/504/506 of The Indian Penal Code, 1860 (for short, IPC) passed by Judicial Magistrate, Roorkee in case No. 481 of 2007.

11. Heard learned Counsel for the applicant and perused the material available in file.

12. Brief facts of the case are that respondent No. 2 filed a complaint before J.M., Roorkee against the applicants stating therein that the complainant (respondent No. 2) is a retired 4th Class employee from Army and is of 72 years. Lalit Kumar Pahwa was the only son of the complainant and applicant No. 1 is the widow of his son and other applicants are father, mother and uncle of applicant No. 1. It is further alleged that on 2.2.2006 at about 8 PM when the complainant was outside his house then all the applicants beaten him with the intention to grab the property of the complainant. With the same averments, the present complainant was filed by the complainant. In support of the complaint, the complainant examined himself u/s 200 Cr.P.C. and u/s 202 Cr.P.C., Mahendra Singh and Asharam were got examined. After hearing learned Counsel for the parties and perusing the material available, learned Judicial Magistrate, Roorkee, vide order dated 17.5.2006, dismissed the complaint u/s 203 Cr.P.C. Against the said order dated 17.5.2006, the complainant preferred a revision before Sessions Judge, Haridwar, who, vide his judgment and order dated 25.11.2006, allowed the revision and set aside the order dated 17.5.2006 and remanded the matter back to Judicial Magistrate, Roorkee for consideration of the matter afresh. Thereafter, the learned Judicial Magistrate, Roorkee, vide order dated 2.3.2007 took the cognizance of the offence under Sections 323, 504 and 506 IPC and also summoned the applicants. Being aggrieved by the said summoning order dated 2.3.2007, the applicants preferred the present petition u/s 482 Cr.P.C. before this Court.

13. From a perusal of the contents of the complaint and after going through other papers available in file, I am of the view that prima facie a case under the aforesaid sections is made out against the applicants.

14. Even otherwise, the trial court will decide the case after recording the evidence of the complainant as well as of the accused persons and also on the basis of the appreciation of the evidence as per law. It is well settled that while exercising jurisdiction u/s 482 of the Cr.P.C., this Court would not ordinarily embark upon the enquiry as to whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial court. If the allegations made in the complaint are taken at their face value and accepted in their entirety, I am of the view that the

applicants have rightly been summoned by the trial court. The trial court will decide the case after recording the evidence adduced before it. I am of the view that in the present case there is neither any miscarriage of justice nor any abuse of process of court.

15. For the reasons recorded above, there is no force in the application. The C482 application is dismissed accordingly. Interim order dated 31.8.2007 stands vacated.