

(2011) 11 UK CK 0126

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 639 of 2007

Sri Chanchal Singh and others

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 04-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 441, 448

Citation : (2011) 11 UK CK 0126

Hon'ble Judges : Servesh Kumar Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Servesh Kumar Gupta, J.—By way of this criminal misc. application, a prayer has been made to quash the order of cognizance dated 19.01.1999 passed by Judicial Magistrate, Rudrapur, Udham Singh Nagar as well as order dated 11.07.2000 passed by learned Sessions Judge in revision no. 15 of 2000 together with entire proceedings criminal case no. 693 of 1999 titled as M/s Kesar Enterprises Ltd. v. Jeet Singh and others, pending in the court of Judicial Magistrate, Rudrapur, Udham Singh Nagar.

2. It is pertinent to mention that private respondent no. 4 has been served sufficiently but none turns up on his behalf so this Court has given hearing to learned counsel for the applicants as well as learned Brief Holder for the State.

3. Having heard the matter in issue, it appears that M/s Kesar Enterprises Ltd. Baheri is a sugar and distillery industry based at Kichcha, District Udham Singh Nagar. This industry gave a small dwelling accommodation along with adjacent canteen within the premises of the factory to one Jeet Singh Manral (since deceased). The license of Jeet Singh Manral was terminated by manager of the Company on dated 25.10.1998 and he was asked to vacate the premises and handover the possession of above two buildings. Jeet Singh Manral did not comply with the direction of the management of Company rather he filed civil

suit no. 158 of 1998 against Virendra Singh Solanki, factory manager, seeking an injunction from eviction. This injunction suit was decreed on dated 23.08.2004 by Civil Judge (Junior Division) and the appeal where against was also dismissed by learned District Judge, Udham Singh Nagar on dated 01.11.2006. Second appeal no. 100 of 2007 was filed by M/s Kesar Enterprises Ltd. and Virendra Singh Solanki before this Court and the same was dismissed by this Court on dated 14.12.2007 rendering the finality of decree passed by Civil Judge in favour of Jeet Singh Manral.

4. Taking note of filing of civil suit by Jeet Singh Manral, a criminal complaint was filed by M/s Kesar Enterprises Ltd. against Jeet Singh Manral and his two sons Chanchal Singh and Laxman Singh besides Manju, wife of Chanchal Singh u/s 441, 448 IPC in the court of Judicial Magistrate, Rudrapur, Udham Singh Nagar. Learned Magistrate, having gone through the statement of complainant and other material placed before him, took cognizance in the matter on 19.01.1999. Jeet Singh Manral died meanwhile and rest of the accused persons moved an application before Judicial Magistrate filing their objection against the order of cognizance but the learned Magistrate dismissed their objection vide order dated 20.04.1999. Being disgruntled with this order, revision No. 15 of 2000 was filed by Jeet Singh Manral and others and learned Sessions Judge vide order dated 11.07.2000 dismissed the same.

5. Challenging the order of learned Sessions Judge, writ petition no. 4434 of 2000 was filed by Jeet Singh Manral and others in Allahabad High Court, which after being transferred to this Court was re-numbered as writ petition no. 1505 of 2001. The said writ petition was placed before learned Single Judge of this Court on 09.08.2007 and the same was dismissed being not pressed with liberty to seek appropriate remedy before appropriate forum.

6. Learned counsel for the petitioners has apprised this Court that since redress was sought by filing the petition seeking extraordinary jurisdiction of the Court, hence, this Court was of the view that writ petition was not appropriate remedy and the redress could have been sought by filing Misc. Application u/s 482 Cr.P.C. So soon thereafter, in compliance of the directions of this Court, this criminal misc. application was filed on 05.09.2007 wherein further proceedings in criminal case no. 693 of 1999 pending in the court of Judicial Magistrate, Rudrapur, Udham Singh Nagar were stayed.

7. Having appreciated the controversy in question and regard being had to the civil litigation between the parties which has attained finality by judgment rendered by this Court in second appeal no. 100 of 2007 on dated 14.12.2007, it is clear that dispute pertains to the premises having one room dwelling accommodation as well as one canteen, which was given on lease to Jeet Singh Manral so offence of Section 441 IPC which envisages a criminal trespass, is not made out by any stretch of imagination, when this offence is not made out then there is no question of application of another provision of section 448 IPC which envisages punishment for the criminal trespass.

8. In view of the above, this petition has merits. It deserves to be allowed. Accordingly, the petition is allowed. Impugned orders dated 19.01.1999, 20.04.1999 and 11.07.2000 are hereby set aside. Therewithal criminal case no. 693 of 1999 (M/s Kesar Enterprises Ltd. v. Jeet Singh Manral and others) pending in the court of Judicial Magistrate, Rudrapur, Udham Singh Nagar is hereby quashed.