
(2011) 11 UK CK 0038
In the Uttarakhand High Court
Case No : C482 No. 505 of 2007

Sudhakar Benjwal

APPELLANT

Vs

State of Uttarakhand and another

RESPONDENT

Date of Decision : 16-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 482
Penal Code, 1860 (IPC) — Section 325, 326, 504, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 19, 3

Citation : (2011) 11 UK CK 0038

Hon'ble Judges : Servesesh Kumar Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Servesesh Kumar Gupta, J.—By way of this criminal misc. application, moved u/s 482 CrPC, the prayer has been made to quash Criminal Misc. Case No. 680 of 2006 Beeru Lal v. Sudhakar Benjwal, which was pending in the court of Chief Judicial Magistrate, Rudraprayag. The same was later on committed to Sessions and registered as Sessions Trial No. 7 of 2007 for the offence of Sections 325, 326, 504 and 506 IPC read with Section 3/19 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act).

2. It is pertinent to mention that private respondent Sri Beeru Lal has been sufficiently served, but has not been represented by any of his private counsel, so this Court has rendered hearing to the learned counsel for the petitioner and learned AGA.

3. On perusal of the record, it is adverted that no counter affidavit has been filed by any of the respondents.

4. The facts, shorn off unnecessary details as divulged from the record, are that the Complaint No. 680 of 2006 was filed by Sri Beeru Lal against Sri Sudhakar Benjwal-teacher in a local intermediate college based at Timli, Tehsil Jakholi and

Sri Veer Singh-a clerk in that college, making the allegations against them. Sri Beeru Lal has averred in his complaint that his son Bharat Lal was a student of 10th standard in that school. On 25.1.2005, he was heading towards the class-room after offering usual prayer in the play-ground of the school. At the same time, Sri Sudhakar Benjwal was also proceeding towards the class-room. Both were dashed together, which enraged Sri Benjwal. Sri Sudhakar Benjwal began to beat Sri Bharat Lal and having the racial feeling, he gave 5 to 6 slaps to the student on his temple. He also used caste indicative words threatening to kill him. This beating gave rise to the pain in the ear of student, so he was taken to Community Health Centre, Agastmuni by his father, wherefrom he was referred to Srinagar Hospital. It has been averred that Sri Veer Singh-clerk of that college encouraged accused Sri Sudhakar Benjwal for this misdeed because both accused persons belong to the higher caste status, while the complainant is a scheduled caste. Sri Beeru Lal examined himself u/s 200 CrPC and his wife Manorama and son Bharat Lal u/s 202 CrPC. The learned Magistrate, having gone through the contents of the complaint as well as the statements under Sections 200 and 202 CrPC, took cognizance of the matter against Sri Benjwal only on 26.9.2006 for the offence of Sections 325 and 506 IPC. Feeling disgruntled, complainant Sri Beeru Lal preferred Revision No. 16 of 2006 to the court of Sessions Judge, which was adjudicated on 15.11.2006 with the direction to the court below that further opportunity be given to the complainant for hearing and then appropriate orders be passed in the light of observations made in the body of judgment of the revision, which were indicating that the Sessions Judge was of the view regarding the nature of the offence to be made out under Sections 326/504 read with Section 3/19 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act). The learned Magistrate on 25.1.2007 modified his order of cognizance. The second order of cognizance divulged that the learned Magistrate has modified the order of cognizance merely on the basis of the view as expressed by learned Sessions Judge in the operative portion of the judgment of revision. Neither he applied his own mind nor provided any further opportunity of hearing to the complainant.

5. It has been argued on behalf of the petitioner that the incident has been alleged to have occurred on 25.1.2005, while the complaint was filed after 19 months and no reason has been offered either in the complaint or in the statement u/s 200 CrPC explaining the exorbitant delay in initiating the prosecution against Sri Benjwal. No FIR was lodged. Even the effort was not made to lodge any FIR. The complainant has said that he took his son Bharat Lal to the Community Health Centre, Agastmuni, but the certificate issued by the Superintendent of that center, which is Annexure-10 to the petition, shows that the name of Sri Bharat Lal, son of Sri Beeru Lal was never registered on 25.1.2005 in the same register, where the OPD patients are registered. It is pertinent to mention that the community health centers in the remote areas are the government hospitals, which are of higher status than the primary health centers and these centers provide a fairly reasonable, at least primary aid to

every patient before referring him/her to higher center. In this regard, the Principal of the concerned college has also sent his report to the Supervisor Kanoongo of the area that no such incident was ever brought to his notice either by Sri Bharat Lal or his guardian.

6. It is also adverted that on the application of Sri Beeru Lal, moved by him somewhere in July, 2006 i.e. after one and half year of the incident, the matter was got inquired by the Collector of the district, where prima facie it was found to be unsubstantial.

7. Fortiori, it is worthy to be taken note of that Sri Beeru Lal and his wife Manorama were not the witnesses of the incident. The sole witness of the incident was Sri Bharat Lal-the student and he does not state even a single word as to what caste indicative word was used by Sri Benjwal to insult him in public view. So making blank allegations by Sri Beeru Lal is a sheer abuse of the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) and by initiation of such an unsubstantial complaint, a respectable teacher cannot be left to face rigmarole trial before the Sessions Judge.

8. In view of the above, this petition has substance and it is allowed accordingly. The Criminal Complaint Case No. 680 of 2006 making it a Sessions Trial No. 7 of 2007 on commission is hereby quashed.