
(2020) 08 UK CK 0016

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 668 Of 2013

Surendra Singh @ Chhinder

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 14-08-2020

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 417, 419, 420, 467, 471

Code Of Criminal Procedure, 1973 — Section 164

Uttar Pradesh Excise Act, 1910 — Section 60(2)

Citation : (2020) 08 UK CK 0016

Hon'ble Judges : Ravindra Maithani, J

Bench : Single Bench

Advocate : Lalit Sharma, Sachin Panwar

Final Decision : Disposed Of

Judgement

Ravindra Maithani, J

1. The petitioner filed the instant petition seeking following reliefs:-

(a) Direct the other judicial officers/ registrar of this Honâ??ble Court to record the statement u/s 164 Cr.p.c.(sic) of applicant.

(b) Action be taken against the judicial officer, who intentionally recored (sic) wrong statement of applicant.

(c) Action be taken against the Investigating Officer, who has manuplated (sic) the case dairy to confirm the involvement of applicant in aforesaid case.

(d) Any other relief which this Honâ??ble Court deems fit.

2. Before proceeding further, it would be expedient to understand the backdrop in which the present petition has been filed. It is much clear by a

report dated 27.07.2013, sent by learned Civil Judge (J.D.)/ Judicial Magistrate,

Rudrapur, District Udham Singh Nagar. It is as hereunder:-

(i) On 05.11.2007, at 6:30 in the morning, police arrested some persons, while manufacturing illicit liquor. Some of the persons were arrested, but one

person, according to the FIR, ran away, who was Sonu Kachura son of Ratan Singh, R/o Bindukhera, Police Station Rudrapur, District Udham Singh

Nagar. Based on it, FIR No. 5763 of 2007 under Section 60 (2), Excise Act was lodged at Police Station Rudrapur. This FIR was investigated and it

appears chargesheet was filed. It is the basis of Criminal Case No. 228 of 2010 in the Court of Civil Judge, (J.D.)/ Judicial Magistrate, Rudrapur (for

short â??the caseâ??).

(ii) The accused Sonu Kachura surrendered in the Court in the case on 03.09.2007 and he was granted bail on 04.12.2007. Subsequent to it, Sonu

Kachura remained absent in the case.

(iii) On 24.08.2012 surety Bagwan Singh Produced Sonu Kachura before Court, in the case and he was taken into custody. Surety was discharged.

(iv) On 18.09.2012, Sonu Kachura moved a confession application in the case. Based on his confession, he was convicted and sentenced for six

months imprisonment and a fine of Rs.10,000/-. He was sent to jail.

(v) The jailor from Sub-Jail Haldwani, where Sonu Kachura was undergoing the sentence, sent a letter on 26.02.2013, to the Court of learned Chief

Judicial Magistrate, Udham Singh Nagar that the person, who confessed the guilt in the Court is, in fact, Malkeet Singh son of Jeet Singh and not Sonu

Kachura son of Ratan Singh. Learned Chief Judicial Magistrate ordered for registering a case on this information and Case Crime No. 30 of 2013

under Sections 417, 419, 420, 467, 471 and 120-B IPC was lodged at Police Station Pantnagar, District Udham Singh Nagar.

(vi) On 01.04.2013, the penal lawyer moved an application in the case (Case No. 228 of 2010 which was decided on 18.09.2012) for summoning the

record of the case.

(vii) On the application of the penal lawyer, the record of the case was summoned and a Misc. Case No. 06 of 2013 (for short â??the misc. caseâ??)

was registered to make an administrative enquiry as to whether Malkeet Singh confessed the guilt on behalf of Sonu Kachura by impersonate him, so

that penal proceedings may be drawn.

(viii) In this Misc. Application No. 06 of 2013, on 22.05.2013, the statement of Malkeet Singh, Sonu Kachura and Sub Insector, Pankaj Joshi were recorded.

2. Heard learned counsel for the parties through video conferencing and perused the records.

3. Instant petition has been filed by the petitioner challenging that his statement recorded on 22.05.2013, in the misc. case has wrongly been recorded.

The petitioner is not Sonu Kachura as recorded in his statement. The petitioner repeatedly told to the Magistrate concerned that he is not Sonu

Kachura, but, Magistrate yelled at him and warned him not to speak more. In para 8 of the petition, it is recorded that the statement under Section 164

of the Code of Criminal Procedure, 1973 (â??the Codeâ??) were recorded on 22.05.2013 (in fact, there has been no statement recorded under Section

164 of the Code). In the instant petition, at various places, the statement recorded in the Misc. Case on 22.05.2013, has been referred to as a

statement of the petitioner, recorded under Section 164 of the Code. As stated, it is not a statement recorded under Section 164 of the Code. Learned

Magistrate in his report categorically stated that it was an administrative enquiry to ascertain, as to who was the person, that was undergoing sentence

in the case.

4. When the matter was taken up in this Court various orders were passed by the Court to find out, as to what had happened in the case. As to

whether, petitioner is known as Sonu Kachura and was arrested and released on bail on 04.12.2007, in the case, or from the very beginning Malkeet

Singh was arrested being Sonu Kachura and was enlarged on bail. The Court directed for specimen signatures and thumb impressions of the present

petitioner as well as Malkeet Singh. Such specimen signatures have been forwarded to this Court. But, on 14.11.2019, this Court observed that the

report of Forensic Science Laboratory (for short â??FSLâ??) is vague and a detailed report was sought. Now, report of learned Judicial Magistrate,

Udham Singh Nagar has been received along with the FSL report.

5. Learned counsel for the petitioner would submit that Malkeet Singh is Sonu Kachura, because the person, who surrendered before the Court in the

case, on 03.12.2007 and the person, who is undergoing sentence, is one and the same person, as their fingerprints match with each other as per FSL

report.

6. On the other hand, learned State counsel would submit that thumb impressions are not clear, therefore, expert can only comment on it.

7. The question does not restrict to identify as to who appeared in the case on 03.12.2007 and who is undergoing sentence. The question is real

identity of the accused Sonu Kachura in the case.

8. This Court is of the view that further proceedings of this petition would be nothing but abuse of process of this Court for the simple reason that as to

who is Sonu Kachura and who was undergoing sentence in the case, was subject matter of dispute in the Misc. Case No. 06 of 2013, before the

Court concerned. The concerned Court had taken cognizance of the controversy about the identity of the person, who was undergoing sentence in the

case and to that purpose, the Court concerned would have examined the fingerprints of other identity marks of the persons. The Misc. Case was an

endeavor made by learned court below to ascertain the truth and in that proceeding only on 22.05.2013, statement of the petitioner was recorded.

Petitioner has one objection that his name is not Sonu Kachura and he immediately told it to the Court, but, despite that the Magistrate yelled at him

and did not hear him. But, this Court would also like to observe that the court below had not finally concluded anything. The petitioner still have an

opportunity to give his objections in writing in the same court, perhaps the Presiding Officer is not same today. Even if it is same, none stops the

petitioner to raise his objections during the course of proceedings and the Court is duty bound to consider and pass appropriate orders on such

objections.

9. This Court is of the view that interest of justice would be served if the learned court below is allowed to continue with the Misc. Case No. 06 of

2013, to ascertain the identity of Sonu Kachura, who was accused in Criminal Case No. 228 of 2010 as well as identity of the person, who was taken

into custody initially and who was undergoing sentence in the case. The learned court below would also ascertain, as to whether, the person, who was

taken into the custody in the case, in fact, is Sonu Kachura, who was wanted in Criminal Case No. 228 of 2010 (which is based on Case Crime No.

5763 of 2007, under Sections 60 (2) Excise Act). These all are the matters to be determined by the court below in the misc. case, which relates to the

Criminal Case No. 228 of 2010. Accordingly, the instant petition may be disposed of with certain directions. Hence the following directions:-

(1) A copy of the petition along with copies of the reports received from Chief Judicial Magistrate as well as original Forensic Science Laboratory

reports with its annexures be sent to the Court concerned which was dealing with Misc. Case No. 06 of 2013.

(2) The learned court below is requested to further afford an opportunity of hearing to the petitioner and to the prosecution, which includes, submission

of written objections and proceed to decide the matter, in accordance with law, as expeditiously as possible. The Court shall establish the identity of

the following persons:-

(i) Sonu Kachura son of Ratan Singh, R/o Bindukhera, Police Station Rudrapur, District Udham Singh Nagar, who was accused in Criminal Case No.

228 of 2010 (which is based on Case Crime No. 5763 of 2007, under Sections 60 (2) Excise Act, Police station Rudrapur, District Udham Singh

Nagar).

(ii) The person who was produced on 24.08.2012 in Criminal Case No. 228 of 2010 by surety Bhagwan Singh as Sonu Kachura.

(iii) The person who confessed his guilt on 18.09.2012 in Criminal Case No. 228 of 2010.

(iv) The person who was undergoing sentence in Criminal Case No. 228 of 2010.

(3) If the Court after enquiry finds that impersonation was done or identity was forged before the Court, the Court shall deal with it sternly in

accordance with law.

10. The petition stands disposed of accordingly.