

(2010) 10 UK CK 0021

In the Uttarakhand High Court

Case No : Criminal Application No. 393 of 2010

Tarsem Singh and Darshan Singh

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 05-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 173(2), 190(1), 200, 202
Penal Code, 1860 (IPC) — Section 324, 504, 506

Citation : (2010) 10 UK CK 0021

Hon'ble Judges : Dharam Veer, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dharam Veer, J.—This application, moved u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter to be referred as Code of Criminal Procedure), is directed for quashing the summoning order dated 04.5.2009 passed by the Addl. CJM, Kashipur, US Nagar in Criminal Case No. 378 of 2009, Balbeer Singh v. Tarsem Singh and Anr., u/s 324/506 IPC.

2. Heard learned Counsel for the Petitioners and perused the entire material on record.

3. In nutshell the facts of the case are that Respondent lodged an FIR against the Petitioners on 25.5.2008, stating therein that on 25.5.2008 at 11:00 AM, when he was coming back after seeing the sand, the Petitioner Tarsem Singh, being armed with an axe, and Petitioner Darshan Singh, being armed with a knife, stopped him. Both the Petitioners uttered filthy abuses to the complainant and the Petitioner Darshan Singh assaulted the complainant on his right hand by knife while the Petitioner Tarsem hit the axe on the head of the complainant, with intention to kill him. When the complainant came back in order to save, the axe hit on his foot, as a result of which a finger of his foot was hanged after being cut. The accused while going also gave threat to the complainant to his life. On the basis of this FIR, a case was registered against them as FIR No. 264/08 u/s

324/504/506 IPC. After that the matter was investigated and on completion of investigation, the IO submitted the final report on 25.7.2008 against which the protest petition was filed by the complainant/Respondent before the court below on 5.3.2009. In support of the complaint, the complainant himself was examined u/s 200 Code of Criminal Procedure while the statement of Surjeet Singh was recorded u/s 202 Code of Criminal Procedure while in documentary evidence, receipt of govt. hospital and other papers were filed. After considering the entire facts and circumstances of the case, vide order-dated 04.05.2009, learned Addl. CJM, Kashipur, Distt. US Nagar, re-directed the In-charge Inspector Kotwali Haldwani to further investigate the matter and submit the report. Hence this petition.

4. Learned Counsel for the Petitioner submitted the learned Magistrate has passed the impugned order in a technical manner and she had not applied the mind while passing the impugned order and the said order is not as per law. On the contrary, learned Brief Holder for the State, while completely supporting the order passed the trial court, submitted that the learned Magistrate has passed the order as per law.

5. I find force in the argument advanced on behalf of learned Brief Holder for the State that the learned Magistrate has rightly passed the impugned summoning order after examining the entire facts and circumstances of the case. The learned Magistrate has passed the impugned order as per the settled law as well as in the light of a judgment of Hon"ble Apex Court in the case of Minu Kumar and Anr. v. State of Bihar and Ors. reported in (2006) 2 SCC 310, wherein it has been held in para 11 as under:

11. When a report forwarded by the police to the Magistrate u/s 173(2)(i) is placed before him several situations arise: the report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further investigation u/s 156(3) and require the police to make a further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he again has option of adopting one of the three courses open i.e. (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police u/s 156. The position is, therefore, now well settled that upon receipt of a police report u/s 173(2) a Magistrate is entitled to take cognizance of an offence u/s 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to

the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers u/s 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case u/s 190(1)(a) though it is open to him to act u/s 200 or Section 202 also. See *India Carat (P) Ltd. v. State of Karnataka*.

6. In view of the above quoted judgment, it is clear that when a report concluding that no offence appears to have been committed is produced, in that case, there are three courses open before the Magistrate (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police u/s 156(3). In the present case, the learned Magistrate has adopted the third course thereby directing the In-charge Inspector Kotwali Haldwani to further investigate the matter and submit the report. Hence, in view of judgment of Hon''ble Apex Court in case of *Minu Kumar (Supra)*, the impugned order passed by the learned Addl. CJM appears to be perfectly justified and as per law.

7. For the reasons recorded above, there is no force in the application. The application C482 is devoid of merits and is hereby dismissed in limine.