
(2010) 05 UK CK 0064

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 527 of 2005

Vinod

APPELLANT

Vs

State of Uttaranchal and Another

RESPONDENT

Date of Decision : 06-05-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 482
Penal Code, 1860 (IPC) — Section 323, 325, 506

Citation : (2010) 05 UK CK 0064

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Vivek Shukla, for the Appellant; M.A. Khan, Brief Holder for State, for the Respondent

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—Heard learned Counsel for the Petitioner and learned Counsel for the State.

2. By means of the this petition, moved u/s 482 of Code of Criminal Procedure, 1973, the Petitioner has sought quashing of the proceedings of criminal case No. 1655 of 2004 State v. Vinod and Ors. relating to offences punishable under Sections 323, 325, 506 of I.P.C, Police Station, Jwalapur, District Haridwar, pending in the court of Chief Judicial Magistrate, Haridwar.

3. Learned Counsel for the Petitioner submitted that in respect of the incident dated 05.06.2004, a non cognizable report was registered by the Police Station Jwalapur, relating to offences punishable u/s 323, 506 I.P.C against the Petitioner Vinod and three others namely Mohit, Sandeep and Sanjay. It is argued on behalf of the Petitioner that on a non cognizable report, the police could not have investigated the matter, as such the charge sheet filed in the case by the police is liable to be quashed.

4. No doubt Sub-section (2) of Section 155, provides that no police officer shall

investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case or trial, but in the present case the facts are not as simple as projected in the petition. It is true that initially a non-cognizable report was lodged, in respect of incident in question but after medical examination, the medical officer had advised the injured/complainant for x-ray. The supplementary medical report of the injured shows that in the x-ray, fracture of the right thumb of the injured, was found. Since this constituted grievous injury suffered by the injured/complainant (Respondent No. 2) the police converted the case registered as NCR relating to one punishable u/s 325 I.P.C. After the conversion of the report in view of the above development the non-cognizable report did not remain as NCR. Rather now the same NCR was a First Information Report of a cognizable offence. That being so, there appears no illegality on the part of the investigating officer in investigating the case without formally seeking permission from the concerned Magistrate. The permission was necessary as required u/s 155(2) of Code of Criminal Procedure till the report registered by police remained non-cognizable report only. In respect of a cognizable offence it was not necessary for the police to seek the permission. That being so the impugned charge sheet can not be quashed on the ground that the Investigating Officer had no power to investigate the crime which was initially lodged as non cognizable report, but later found to be report of cognizable offence and converted accordingly.

5. For the reasons as discussed above, this petition u/s 482 of Code of Criminal Procedure is dismissed with the observation that if the Petitioner Vinod surrenders before the court concerned (if not already on bail) and moves on bail application, his bail application shall be heard and disposed of without unreasonable delay. Interim order 18.08.2005, stands vacated.