
(2019) 09 UK CK 0154

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 80 Of 2019

Vinod Kumar

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision : 23-09-2019

Acts Referred:

Indian Penal Code, 1860 — Section 307, 323, 324, 325, 452, 504, 506
Code Of Criminal Procedure, 1973 — Section 323

Citation : (2019) 09 UK CK 0154

Hon'ble Judges : N.S. Dhanik, J

Bench : Single Bench

Advocate : Nagesh Aggarwal, S.K. Chaudhary, Neetu Singh

Final Decision : Dismissed

Judgement

N.S. Dhanik, J

One Rajkumar (father of the respondent no. 4 herein) lodged an FIR bearing Case Crime No. 61/2013 on 23.3.2013 at 9.20 AM with the allegations that three days ago, arguments had taken place between the present applicant and his nephew Pawan (respondent no. 5) herein; at about 8.30 PM on 22.3.2013, when Pawan was sitting in his house, present applicant armed with Palkati and co-accused Naresh, Subhash and Monu armed with iron rod, lathi and danda came to his house and assaulted Pawan with their weapons; Pawan received serious injuries in this incident and fell down on the surface; on hearing the noise, Vikas (respondent no. 4), Nitin, Sewaram (respondent no. 2) and Smt. Vimla came to intervene; then the accused applicant and other co-accused also assaulted them and inflicted injuries; meanwhile, many people of the village gathered there who tried to intervene because of which the applicant and his companions fled away holding out threat to kill; injured were shifted to Government Hospital, Roorkee and since the condition of Pawan was serious, he was taken to Ramanand Hospital, Haridwar.

On 23.3.2013 at 8.30 PM, applicant Vinod Kumar also lodged an FIR bearing Case Crime No. 63/2013 against the private respondents 2 to 5 herein with the allegations that the said respondents are involved in the black-marketing of wheat and rice; SDM concerned raided their godown; the said respondents suspected the applicant for the same and started nurturing enmity towards the applicant; at about 8 PM on 22.3.2013, these accused persons, armed with sharp edged weapons and dandas, came at the house of applicant; they abused and assaulted the applicant and his father, who received serious injuries; on hearing the noise, many people gathered there; then the said accused persons fled away threatening the applicant not to complain to the SDM in future; applicant's father was taken to Bhagwanpur Civil Hospital, from where he was referred to Civil Hospital, Roorkee and then to PGI, Chandigarh.

After investigation, police filed chargesheet in both the cases. In Case Crime No. 61/2013, the chargesheet was filed for the offences under Sections 452, 307, 323, 324, 325, 504 and 506 IPC, while in Case Crime No. 63/2013, the chargesheet was filed for the offences under Sections 452, 323, 324, 504 and 506 IPC. In Case Crime No. 61/2013, after taking the cognizance the learned Magistrate committed the case to the Court of Sessions and the same was registered as S.T. No. 1859 of 2013 and the trial is going on against the applicant and the co-accused, whereas since all the offences in Case Crime No. 63/2013 are triable by the Magistrate, trial in this case (no. 2138/2014) is going on against the respondents 2 to 5 in the Court of Additional Chief Judicial Magistrate, Roorkee, District Haridwar.

The applicant moved an application under Section 323 CrPC with the prayer to commit the Case No. 2138/2014 (Case Crime No. 63/2013) to the Court of Sessions so that trial in both the cases should proceed together. Vide the impugned order dated 25.3.2017, the Court below rejected the said application of the applicant. Being aggrieved, the applicant has filed the present C482 application with the prayer to quash the said order and direct the Court below to commit the Case No. 2138/2014 (Case Crime No. 63/2013) to the Court of Sessions.

The main thrust of the contention of learned Counsel for the applicant is that both these cases are cross-cases and these should be tried and decided by the same Court where the trial in Case Crime No. 61/2013, against the present applicant and co-accused, are going on.

I do not find any substance in the contention of learned Counsel for the applicant. Place of occurrence, time of occurrence and date of occurrence fundamentally plays a significant role in the assessment whether there are two versions of the same incident or not. In the present case, place of occurrence and time of occurrence of both the alleged incidents are different. In Case Crime No. 61/2013, place of occurrence is the house of respondents 2 to 5 and time of occurrence is 8.30 PM in the night of 22.3.2013, whereas in Case Crime No. 63/2013, place of occurrence is the house of the present applicant and time of

occurrence is about 8 PM in the night of 22.3.2013. As is evident, both place and time of occurrence of these two incidents are different. Hence, it cannot be said that there are two versions of the same incident. Moreover, the chargesheet in Case Crime No. 61/2013 was filed, inter alia, for the offence under Section 307 IPC, which is exclusively triable by the Court of Sessions and, therefore, learned Magistrate committed the said case to the Court of Sessions, while in Case Crime No. 63/2013, lodged by the present applicant, all the offences are triable by the Magistrate.

Two different versions of the same incident resulting into two criminal cases are described as cross-cases and in such a situation, the provision of Section 323 CrPC can be invoked.

It appears that the applicant as a dilatory tactic moved the application under Section 323 CrPC. Trial in Case Crime No. 63/2013 is proceeding since the year 2014; applicant moved the application under Section 323 CrPC on 29.1.2016; impugned order was passed on 25.3.2017 and now, almost after two years, the present C482 application was filed on 9.1.2019. The conduct of the applicant shows that he is consecutively adopting the dilatory tactic. Even otherwise, it is an admitted fact that the trial in Case Crime No. 61/2013 is at the stage of 313 CrPC and about to conclude.

Learned Counsel for the applicant cited some judgments of the Hon'ble Apex Court rendered in *Nathi Lal v. State of U.P.*, 1990 Supp 1 SCC 145 and in *Sudhir v. State of M.P.*, 2001 0 AIR (SC) 826. These authorities are not attracted in the case in hand. In these authorities, the Hon'ble Apex Court has held that the trial in cross-cases arising of the same incident should proceed together. As is observed, the two alleged incidents in the present case are not the cross-version of the same incident.

For the reasons set forth above, I find no infirmity in the impugned order. It is a detailed order and does not warrant any interference. Consequently, this C482 application fails and is hereby dismissed. Interim order, if any, stands vacated.

It is made clear that observations made in this judgment are only for the purpose of deciding this case and the same shall not prejudice the trial against the accused persons and shall not be considered in any other proceedings.