

Uttarakhand High Court

Vijay Kumar Gupta vs State Of Uttarakhand & Another on 18 December, 2019

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application (C-482) No. 1087 of 2016

Vijay Kumar Gupta
Applicant

versus

State of Uttarakhand & another
Respondents

Mr. Siddhartha Singh, Advocate for the applicant.

Mr. Sandeep Tandon, Deputy Advocate General and Mr. Lalit Miglani, Brief Holder for the State.

Mr. Rakesh Thapliyal, Senior Advocate assisted by Mr. Mukesh Kaparuwan, Advocate for respondent no. 2.

List of cases referred:

1. (2016) 1 SCC 348, International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) vs Nimra Cerglass Technics Private Ltd.
2. (2013) 3 SCC 330, [Rajiv Thapar vs Madan Lal Kapoor](#)
3. (2013) 1 SCC (Cri) 986, [Amit Kapoor vs Ramesh Chander](#).

Hon'ble Lok Pal Singh, J.

By means of present application under [Section 482](#) Cr.P.C., the applicant seeks to quash the criminal proceedings in Criminal Case no. 55 of 2016, under [Sections 420, 468, 471](#) IPC and [Section 66\(D\)](#) of Information Technology Act, pending in the court of Judicial Magistrate, First Class, Narender Nagar, District Tehri Garhwal.

2) A complaint was lodged by the complainant / respondent no. 2 against the

applicant with P.S. Muni-Ki-Reti, Narendra Nagar, District Tehri Garhwal, stating therein, that the applicant committed forgery for purpose of cheating by using as genuine the forged and fraudulent document with the intention to cause damage to the Trust and hacked the information stored in the computer. The said complaint was registered as case crime no. 30 of 2015, under [Sections 420, 468, 471](#) IPC and [Section 66 \(D\)](#) of the Information Technology Act against the applicant. During investigation the I.O. recorded statements of the complainant as well as witnesses. After completion of investigation, charge sheet was submitted against the applicant in respect of selfsame offences. Learned Magistrate took cognizance against the applicant and summoned him to face the trial in respect of selfsame offences.

3) Learned counsel for the applicant would submit that the applicant is an old trustee since 1993 and subsequently was appointed as President of Kailashanand Mission Trust on 30.05.2011. He would further submit that the proceedings against the applicant are nothing but the outcome of revengeful activity of the complainant and his associates. It is contended that the fact that applicant is President of the Trust is well within the knowledge of the complainant, who concealed said fact and lodged false FIR against the applicant as unknown hacker. Lastly, it is submitted that the charge sheet as well as the entire proceedings of the criminal case pending before the Magistrate against the applicant are nothing but abuse of process of law and Court.

4) Per contra, learned senior counsel appearing for the complainant / respondent no. 2 would submit that the complainant was a person of confidence with Swami Kailashanand and he remained Chairman of Trust, while Swamiji was alive. A registered Power of Attorney was executed on 10.08.2005 in favour of the complainant in this regard. Learned counsel for the complainant would also submit that complainant was never a clerk, as alleged, but he was Secretary of the Trust. Complainant was nominated as trustee and Chairman of Trust on 13.03.2007 and other trustees rescued to accept him as trustee and Chairman of the Trust. Learned senior counsel would further submit that due to nefarious activities of the applicant, Swami Kailashanand was annoyed with him and by way of a resolution of trust dated 27.08.1988, he cancelled all rights of the applicant and even removed him from the post of

Manager of Trust. It is contended that earlier, on the instructions of Swamiji, a criminal complaint case was filed against the applicant and his associates in the court of C.J.M., Tehri Garhwal under Sections 392, 395, 120B IPC read with Section 114, 426, 456, 506 of IPC, which was registered as criminal case no. 322 of 2008. It is also contended that various complaints were filed against the applicant for forging Trust's letter pad, seals and receipt book and resolutions.

5) Mr. Sandeep Tandon, learned Dy.

Advocate General would submit that at this stage the Court should not consider the evidence meticulously. He would further submit that since cognizance has been taken in respect of the offences complained of against the applicant, the applicant is at liberty to move an application seeking his discharge before the concerned Magistrate at an appropriate stage.

6) Learned counsel for the applicant placed reliance upon a judgment rendered by Hon'ble Apex Court in International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) vs Nimra Cerglass Technics Private Ltd.1, and on the strength of said judgment it is argued that in order to bring a case for offence of cheating, it is not merely sufficient to prove that a false representation was made, but it is further necessary to prove that the representation was false to the knowledge of accused and was made in order to deceive complainant. It is further submitted that from the averments made in the FIR, essential ingredients of cheating are not made out, as such, the criminal proceedings against the applicant are liable to be quashed.

7) The facts of the judgment (supra) are different from the facts of the present case. In the judgment (supra) the appellants were officers, Associate Director and Director of ARCI, who claimed that they are in possession of technology for manufacturing of extruded ceramic honeycombs used in manufacturing of catalytic converters, which again are used in automobiles for controlling emission. On said assurance, the respondent entered into technology transfer agreement with ARCI, for which the respondent paid rupees ten lacs in installments and also installed the comprehensive machinery spending around rupees one crore thirty lacs. Later it was found that scientists working in ARCI have not perfected the honeycomb technology sufficient for commencing commercial production and by their false representations induced the respondent to spend huge amount and thus the appellants have committed an offence of cheating. Hon'ble Apex Court in the judgment (supra) has held that from the averments made in the complaint, essential ingredients of dishonest intention are not made out against the appellants and quashed the criminal proceedings initiated against them.

8) Here, in the present case, on a bare reading of the FIR and the charge sheet thus submitted, foundation of criminal offence is laid against the applicant.

9) The Hon'ble Apex Court in Para 28 of ruling of Rajiv Thapar Vs Madan Lal Kapoor2 has held as under:-

"28. The High Court, in exercise of its jurisdiction under [Section 482](#) of the Cr.P.C., must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused is. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/ complainant, it would be impermissible to discharge the accused before trial. This is so, because it would result in giving finality to the accusations levelled by the prosecution/ complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed, by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position, that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held."

10) Hon'ble Apex Court in [Amit Kapoor vs Ramesh Chander](#)³, has laid down certain principles in respect of exercise of jurisdiction under [Section 482](#) of Cr.P.C. One of the principle is that the Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the court may interfere. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence. The power is to be exercised ex debito justitiae, i.e., to do real and substantial justice for administration of which alone, the courts exists.

11) In view of the above and having considered the ratio of the judgments (supra) rendered by Hon'ble Supreme Court, in my opinion, even from a bare perusal of FIR as well as the charge sheet, it is apparent that foundation of criminal offence is laid against the applicant in the instant case. The jurisdiction under [Section 482](#) Cr.P.C. should not be exercised to stifle or scuttle the legitimate prosecution. Certainly this is not the stage to quash the charge sheet. A charge sheet or proceedings of a criminal case should not be curbed on the ground that in case trial is held and concluded, the chances of conviction of the applicant in near future are very bleak.

12) Since, prima facie case is made out against the applicant, the learned Magistrate has rightly taken cognizance and summoned the applicant to face the trial in respect of the offences complained of against him. I do not find any illegality, perversity or jurisdiction error in the order under challenge, as such, the same needs no interference at this stage.

13) At this stage of dictation, learned counsel for the applicant would submit that the applicant is a senior citizen aged about 66 years and is suffering from serious ailments,

therefore, he may be permitted to surrender before the C.J.M., Tehri Garhwal, instead of surrendering before J.M., First Class, Narendra Nagar, Tehri Garhwal and a direction be issued to the C.J.M. Tehri to decide the bail application of the applicant expeditiously, in accordance with law.

14) The prayer made by learned counsel for the applicant is innocuous and is worth accepting. Applicant is permitted to surrender before the C.J.M., Tehri Garhwal, who in turn, shall decide the bail application, if moved by the applicant, expeditiously in accordance with law.

15) Criminal misc. application filed under [Section 482](#) of Cr.P.C. stands disposed of accordingly. Interim order dated 31.08.2016 stands vacated.

16) Let a certified copy of this judgment be issued to learned counsel for the parties within 48 hours, as per rules.

(Lok Pal Singh, J.) Dt. December 18, 2019.

Rajni