

Subhash Goyal Vs. State of Uttarakhand and Others

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Court : Uttaranchal

Decided On : Feb-13-2014

Judge : U.C. Dhyani

Appeal No. : Criminal Misc. Application No. 586 of 2010

Appellant : Subhash Goyal

Respondent : State of Uttarakhand and Others

Judgement :

U.C. Dhyani, J. (Oral)

1. The applicant, by means of present application under Section 482 Cr.P.C., seeks to quash the charge-sheet dated 25.02.2010, summoning order dated 14.05.2010 as well as the entire proceedings of Criminal Case No. 719 of 2010, titled as State vs. Subhash Goyal and others, under Sections 147, 457, 427, 506 of IPC and Section 3 (1) (X) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (herein after referred to as the SC / ST Act), pending before the Judicial Magistrate, Rishikesh, District Dehradun.

2. Informant/respondent no. 2 lodged a first information report on 13.01.2010 at PS Rishikesh, District Dehradun, against three named accused persons including the applicant. After the investigation, a charge-sheet was submitted against the accused persons. Cognizance was taken on the charge-sheet and the accused-applicant was summoned to face the trial. Aggrieved against the same, present

application under Section 482 Cr.P.C. was filed by the applicant.

3. According to the first information report, on 13.01.2010, at 7:15 am, accused Subhash Goyal, Subhash Agrawal, Dinesh Kumar and some other miscreants trespassed into the store of the informant. They threw the articles which were kept inside the store. It is also stated in the FIR that a civil suit was pending before the Civil Court which travelled up to the High Court. Stay was granted by Honble High Court in this case. Another suit was also pending in the Court of Civil Judge, (S.D.), Rishikesh. When the incident took place, the informant was present at home and her husband had gone to market. Informant narrated the incident to her husband on telephone. It was alleged that the accused persons used casteist remarks against the informant (respondent no. 2 herein) and also threatened her along with her family members with dire consequences. The accused persons, in a nutshell, wanted to evict the respondent no.2 and her family members from Ashram.

4. Learned counsel for the applicant submitted that even if the contents of the FIR be conceded to be true, no ingredients of Section 3 (1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act were prima facie made out against the applicant, in the sense that informant nowhere said that the accused used those words intentionally in order to humiliate him knowing it that he belonged to a community of Scheduled Castes or Scheduled Tribes, as was held by the **Honble Supreme Court in Gorige Pentaiah vs. State of Andhra Pradesh and others, (2008) 12 SCC 531.**

5. On perusal of documents on record, foundation of offences under Sections 147, 457, 427, 506 of IPC is laid against the applicant. No prima facie case under the Section 3 (1) (X) of SC/ST Act is made out against him (applicant), in view of Gorige Pentaiahs case (supra), wherein, in paragraph no. 6, it was observed by Honble Apex Court as under:

œIn the instant case, the allegation of respondent No.3 in the entire complaint is that on 27.5.2004, the appellant abused them with the name of their caste. According to the basic ingredients of Section 3(1)(x) of the Act, the complainant ought to have alleged that the accused-appellant was not a member of the

Scheduled Caste or a Scheduled Tribe and he (respondent No. 3) was intentionally insulted or intimidated by the accused with intent to humiliate in a place within public view. In the entire complaint, nowhere it is mentioned that the accused-appellant was not a member of the Scheduled Caste or a Scheduled Tribe and he intentionally insulted or intimidated with intent to humiliate respondent No. 3 in a place within public view. When the basic ingredients of the offence are missing in the complaint, then permitting such a complaint to continue and to compel the appellant to face the rigmarole of the criminal trial would be totally unjustified leading to abuse of process of law.?

6. Honble Supreme Court in **Amit Kapoor vs. Ramesh Chander and another, (2013) 1 Supreme Court Cases (Cri) 986**, has laid down certain principles in respect of exercise of jurisdiction under Section 482 Cr.P.C. Some of those principles, which are relevant to the facts of the instant case, can be summarized as below:

- i. 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.
- ii. 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.
- iii. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.
- iv. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to

interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

v. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

7. There appears to be no illegality in the cognizance and summoning order (order under challenge) so far as the allegations levelled under the Indian Penal Code are concerned. No interference is called for in the same at this stage, as would be evident from the law laid down by Honble Supreme Court in **Rajiv Thapar and others vs. Madan Lal Kapoor (2013) 3 SCC 330**. Para 28 of the said ruling is reproduced herein below for convenience:

œThe 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 defence 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.?

8. Prima facie, offences under Sections 147, 457, 427, 506 of IPC are made out against the applicant, but the offence under Section 3 (1) (X) of the SC/ST Act is not made out in view of Gorige Pentaiahs ruling.

9. Application under Section 482 Cr.P.C. is, therefore, partly allowed to the extent of exclusion of Section 3 (1) (X) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 only. In other words, the applicant will face the trial for the offences for which charge-sheet was submitted against him, but not under Section 3 (1) (X) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Application under Section 482 Cr.P.C. is therefore, dismissed in so far as summoning of the applicant for the offences punishable under the Indian Penal Code is concerned.

10. It is accordingly provided that if the applicant surrenders before learned Magistrate and seeks bail, his bail application shall be decided by learned Magistrate as expeditiously as possible and without unreasonable delay.

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