

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application No.1480 of 2014

Rajendra Singh BhandariApplicant

Vs.

State of Uttarakhand and anotherRespondents

Hon'ble Alok Kumar Verma, J.

This application has been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as ' the Code') to quash the Charge Sheet dated 05.03.2012 in Case Crime No.12 of 2012 registered with Police Station Gopeshwar, District Chamoli and cognizance order dated 18.09.2014, passed by the learned Chief Judicial Magistrate, Chamoli in Criminal Case No.699 of 2012, "State vs. Rajendra Singh Bhandari" under Section 125 of the Representation of the People Act, 1951 (hereinafter referred to as ' the Act, 1951') along with entire proceedings, pending in the court of Chief Judicial Magistrate, Chamoli.

2. Facts, to the limited extent necessary, are that election of the Legislative Assembly of Uttarakhand was held in the year, 2012. The present applicant contested the said election from 04 Badrinath Assembly Constituency as candidate of Indian National Congress Party. While contesting the said election, the present applicant had printed a picture (photo) of Lord Badrinath in his hand bills as well as pamphlets. On account of this illegal act on the part of the applicant to influence the voters and used the religious feelings of local people, an FIR was lodged against the applicant on 25.01.2012 under Section 125 of the Act, 1951 and Section 153A of the I.P.C. by the Returning Officer. In the FIR, it is clearly mentioned that due to the

act of the applicant, the religious sentiments of the people are being shaken. On the basis of the evidence found against the present applicant for his involvement in commission of the crime, the Investigating Officer has submitted the charge sheet against the applicant under sub-section (3) of Section 123 of the Act, 1951.

3. Subsequent to the submission of the charge sheet, the learned Chief Judicial Magistrate took the cognizance under Section 171-F of the I.P.C. read with Section 123 (3) of the Act, 1951 against the present applicant and passed the summoning order on 27.09.2012. Being aggrieved by the said order dated 27.09.2012, the applicant preferred a revision before the Court of Session. The revision was allowed by the learned Sessions Judge, Chamoli vide its order dated 26.06.2014, whereby the learned Sessions Judge remanded the case and directed the Chief Judicial Magistrate, Chamoli to decide the case afresh. In pursuance of the revisional order dated 26.06.2014, the learned Chief Judicial Magistrate, after hearing the arguments of both the parties, passed the impugned order dated 18.09.2014, whereby the learned Chief Judicial Magistrate, Chamoli took the cognizance in the offence punishable under Section 125 of the Act, 1951 and issued summons to the present applicant.

4. Heard Mr. Pankaj Purohit, learned counsel for the applicant and Mr. S.S. Adhikari, learned Deputy Advocate General assisted by Mr. P.S. Uniyal, learned Brief Holder for the State through video conferencing.

5. The learned counsel for the applicant submits that the applicant, a permanent resident of District Chamoli, is highly educated possessing a degree of Post Graduate as well as LLB; he indulged in the field of social activities and raised issues of public importance of the area; he became popular with the public; he

contested the election of Zila Panchayat, Chamoli in the year, 2003 and was elected as the Chairman of Zila Panchayat, Chamoli; he contested the Assembly Election of Uttarakhand in the year, 2005 as an independent candidate from Assembly Constituency, Nandprayag; he was elected for the first time as M.L.A. with huge margin; he was given the charge of "Youth Welfare and Sports" portfolio in the Government; he completed his tenure of five years as a Cabinet Minister in the Government.

6. Learned counsel appearing for the applicant further submits that after delimitation of the Assembly Constituencies in the State of Uttarakhand, the major part of Nandprayag Constituency was included in Badrinath Constituency; the applicant contested the Assembly Election of Uttarakhand, 2012 on the ticket of Congress Party from 04 Badrinath Assembly Constituency; he got elected with the huge margin; he was sitting M.L.A. of Uttarakhand, representing 04 Badrinath Assembly Constituency; he was appointed as Deputy Chairman of "Bees Sutriya Kriyanwayan Samiti, Uttarakhand"; from the bare perusal of the FIR, it is evidently clear that no offence is made out as defined under Section 125 of the Act, 1951; by mere printing of pamphlets with the picture of Shri Badrinath Temple, no offence under Section 125 of the Act, 1951 is constituted; during the investigation, no evidence was collected by the Investigating Officer which would infer the promotion of religious enmity or hatred between two communities on account of the fact of printing of the pamphlets, containing the photo of Lord Badrinath Temple; the learned Chief Judicial Magistrate, while taking cognizance of the matter, could not record the reasons; the entire prosecution was launched by the political opponents; from the material available on record, there is not even remote chance of success of the prosecution against him, even if the entire prosecution case and the material collected are admitted.

7. Per contra, learned Deputy Advocate General appearing for the State, opposed the submissions of learned counsel for the applicant and submits that the Investigating Officer found credible evidence against the applicant for his involvement in commission of the crime; there is a specific case against the applicant for his involvement in commission of the crime and after completion of the investigation, the Investigating Officer filed the charge sheet against the present applicant.

8. Section 482 of the Code envisages three circumstances in which the inherent jurisdiction may be exercised, namely, “to give effect to an order under the Code, or, to prevent abuse of the process of any Court, or, to secure the ends of justice.” Section 482 of the Code reads as follows:

“Saving of inherent powers of High Court:- nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

9. This inherent jurisdiction though wide should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, *ex debito justitiae* to do real and substantial justice. While exercising jurisdiction under this section, the Court does not function as a Court of Appeal or Revision. Therefore, quashing of charge-sheet or setting aside the cognizance order on the appreciation of evidences is not justified.

10. The scope of Section 482 of the Code has been considered by the Hon’ble Supreme Court in various judgments.

11. In **Madhu Limaya Vs. State of Maharashtra, 1978 AIR 47**, the Hon’ble Apex Court has held that the following principles would govern the exercise of inherent jurisdiction of the High Court –

- (1) Power is not to be resorted to, if there is specific provision in Code for redress of grievances of aggrieved party.
- (2) It should be exercised sparingly to prevent abuse of process of any Court or otherwise to secure ends of justice.
- (3) It should not be exercised against the express bar of the law engrafted in any other provision of the Code.

12. In **Pepsi Food Limited vs. Special Judicial Magistrate and others, 1998 (36) ACC 20**, the Hon'ble Supreme Court has observed that the power conferred on the High Court under Article 226 and 227 of the Constitution of India, and under Section 482 of the Code have no limits, but more the power more due care and caution is to be exercised in invoking these powers.

13. In **Lee Kun Hee and others vs. State of U.P. and others, JT 2012 (2) SC 237**, the Hon'ble Supreme Court held that the Court in exercise of its jurisdiction under Section 482 of the Code cannot go into the truth or otherwise of the allegations and appreciate evidence, if any, available on record.

14. In **State of Haryana v. Bhajan Lal (1992) Supp.(1) SCC 335**, the Hon'ble Supreme Court of India considered in detail the provisions of Section 482 of the Code. The Hon'ble Supreme Court summarized the legal position by laying the following guidelines to be followed by High Courts in exercise of their inherent jurisdiction:

- “(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable

offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

15. In the instant case, cognizance has been taken in the offence punishable under Section 125 of the Act, 1951. Section 125 of the Act, 1951 reads as under :-

“Section 125. Promoting enmity between classes in connection with election.—Any person who in connection with an election under this Act promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred, between different classes of the citizens of India shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.”

16. It is the fundamental duty of every citizen to promote harmony and the spirit of common brotherhood and fraternity amongst all the people of India transcending religious, linguistic and regional or sectional diversities. For fair and peaceful election, during the election campaign, party or candidate should not indulge in any activity which may create mutual hatred or cause tension between different classes of the citizens of India on ground of religion, race, caste, community or language.

17. In the present case, the learned Chief Judicial Magistrate took the cognizance after considering the evidences available on the

record. It is well settled that at the time of considering of the case for cognizance and summoning, merits of the case cannot be tested and it is wholly impermissible for this Court to enter into the factual arena to adjudge the correctness of the allegations. This Court would not also examine the genuineness of the allegations since this Court does not function as a Court of Appeal or Revision, while exercising its jurisdiction under Section 482 of the Code. In this matter it cannot be said that there are no allegations against the applicant. Apart this, learned counsel for the applicant could not able to show at this stage that allegations are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the applicant.

18. The use of expression “promotes or attempts to promote” in Section 125 of the Act, 1951 shows that there has to be mens rea on the part of the accused to commit the offence of promoting disharmony amongst different religions under Section 125, whereas, the case of the applicant is that this matter is launched by the political opponents. These allegations are required to be tested only at the time of trial. This Court cannot hold a parallel trial in an application under Section 482 of the Code.

19. Therefore, in the light of the facts and circumstances of the present case, the present case does not fall in any category set out in the judgment of **State of Haryana and others Vs. Bhajan Lal and others (Supra)**. Accordingly, the prayers for quashing the charge-sheet and setting aside the cognizance order along with entire proceedings are refused.

20. Since, the case has to be tried, I make it clear that the observations made earlier are only for the disposal of this application, filed under Section 482 of the Code. These observations will not influence the trial court while deciding the case.

21. With the aforesaid directions, the application, filed under Section 482 of the Code, is dismissed.

(Alok Kumar Verma, J.)
21.09.2020

JKJ/Neha