
(2024) 01 UK CK 0173

Uttarakhand High Court

Case No: Criminal Miscellaneous Application U/s 482 No. 461 Of 2022

Nikhilesh Gharami

APPELLANT

Vs

State Of Uttarakhand
And Another

RESPONDENT

Date of Decision: Jan. 6, 2024

Acts Referred:

- Indian Penal Code, 1860 - Section 323
- Code Of Criminal Procedure, 1973 - Section 2(d), 155(2)

Hon'ble Judges: Pankaj Purohit, J

Bench: Single Bench

Advocate: Yogesh Upadhyaya, B.C. Joshi, Shweta Badola Dobhal

Final Decision: Allowed

Judgement

Pankaj Purohit, J

1. By means of the present C482 application, the applicant has put to challenge the charge sheet dated 22.07.2021 and summoning order dated

01.09.2021, passed by learned Judicial Magistrate, Khatima, Udham Singh Nagar in Criminal Case No.1284 of 2021, State Vs. Nikhlesh Gharami

under Section 323 of IPC, pending before learned Judicial Magistrate, Sitarganj, Udham Singh Nagar.

2. Facts of the case are that an FIR of non cognizable offence was registered by respondent no.2 in Police Station Khatima, District Udham Singh

Nagar. After the orders passed by learned Judicial Magistrate, Khatima, Udham Singh Nagar under Section 155(2) of the CrPC (hereinafter referred

to as "Code" the matter was investigated and the charge sheet dated 22.07.2021 was submitted. The learned Judicial Magistrate, Sitarganj,

Udham Singh Nagar took cognizance on the said charge sheet and summoned the accused as stated above, treating it as a case instituted on police report.

3. Learned counsel for the applicant challenged the impugned order on the ground that in a case arising out of non cognizable report, the Police can

only submit its report and that report shall be treated as a complaint case by the Court, in view of the express provision of the Code given in

Explanation to Section 2(d) of the Code.

4. It is submitted by learned counsel for the applicant that the non cognizable report was investigated and the charge sheet was submitted, but the

same has wrongly been treated by the learned Judicial Magistrate, Sitarganj, Udham Singh Nagar as a State case and cognizance was taken and she

has been summoned.

5. Learned State counsel also agreed to the argument advanced by the learned counsel for the applicant.

6. In order to consider the submission made by learned counsel for the parties, appreciation of Section 2(d) and explanation appended thereto, is needed.

7. Section 2(d) along with its explanation is quoted hereinbelow:-

"complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person,

whether known or unknown, has committed an offence, but does not include a police report.

Explanation.-A report made by a police officer in a case which discloses, after investigation, the commission of a non- cognizable offence shall be

deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;

8. From perusal of the definition “Complaint” and its Explanation, it is clear that if on the report submitted by Police Officer after investigation, it

discloses the commission of non cognizable offence, it shall be deemed to be a complaint and the Police Officer by whom such a report is made shall be

deemed to be complainant.

9. Having gone through the explanation appended to Section 2(d) of the Code, it appears that the learned Judicial Magistrate, Sitarganj, Udham Singh

Nagar has wrongly taken cognizance on the police report as a State case (instituted on police report) and wrongly summoned the applicant accused to

face the trial. Rather charge sheet/police report should have been treated as a complaint and further to proceed in the complaint in accordance with

the provisions of Part XV of the Code.

10. In this view of the matter, the impugned summoning order dated 10.01.2020, passed by learned Judicial Magistrate, Sitarganj, Udham Singh Nagar

in Criminal Case No.1284 of 2021, State Vs. Nikhlesh Gharami under Section 323 of IPC, pending before learned Judicial Magistrate, Sitarganj,

Udham Singh Nagar is hereby quashed.

11. Accordingly, C482 application is allowed. The learned Judicial Magistrate, Sitarganj, Udham Singh Nagar is directed to take charge sheet/report

submitted by the Police Officer as a complaint and to proceed in accordance with law, as provided under Chapter XV of the Code.