

(2018) 10 UK CK 0056

Uttarakhand High Court

Case No: Criminal Misc. Application (C-482) No.635, 620, 798, 1144 of 2017

Samir Thapar & Others

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision: Oct. 23, 2018

Acts Referred:

- Indian Forest Act, 1927 - Section 26, 26(1)(b), (g)
- Indian Penal Code, 1860 - Section 441
- Code of Criminal Procedure, 1973 - Section 482

Hon'ble Judges: V.K. Bist, J

Bench: Single Bench

Advocate: U.K. Uniyal, Arvind Vashistha, Sandeep Kothari, Abhyudai Singh, J.S. Virk

Final Decision: Disposed Of

Judgement

V.K. Bist J.

1. Since all these petitions arise out of a common complaint and facts are also common, therefore, all these petitions are clubbed together and are

being decided by a common judgment. Criminal Misc. Application (C-482) No. 635 of 2017 shall be the leading petition.

2. Prayer made in Criminal Misc. Application (C-482) No. 635 of 2017 and Criminal Misc. Application (C-482) No. 798 of 2017 is as follows:

“It is, therefore, most respectfully prayed that this Hon^{ble} Court may graciously be pleased to quash/ set-aside the Charge-sheet No. 50/17

dated 16.03.2017 as well as the summoning Order dated 20.04.2017 passed by the learned Additional Chief Judicial Magistrate, Kotdwar, District

Pauri Garhwal in Criminal Case No. 460 of 2017 (State Vs. Rohit Singh Dagar and Others) under Section 26(1) (b) and (g) of the Indian Forest Act,

1927, Police Station Kotdwar, District Pauri Garhwal, and further to quash the entire proceedings of Criminal Case No. 460 of 2017 (State Vs. Rohit

Singh Dagar and Others) under Section 26(1) (b) and (g) of the Indian Forest Act, 1927, Police Station Kotdwar, District Pauri Garhwal, which is

pending in the Court of the learned Additional Chief Judicial Magistrate, Kotdwar, District Pauri Garhwal.â€

3. Prayer made in Criminal Misc. Application (C-482) No.1114 of 2017 and Criminal Misc. Application (C-482) No. 620 of 2017 is as follows:

â€œIt is, therefore, Most Respectfully prayed that this Honâ€™ble Court may graciously be pleased to quash/ set-aside the charge-sheet dated

16.03.2017 passed by the learned Additional Chief Judicial Magistrate, Kotdwar, District Pauri Garhwal in Criminal Case No. 460/2017 (State Vs.

Rohit Singh Dagar and others) under sections 26(B) and 26(G) of the Indian Forest Act, 1927, Police Station-Kotdwar, District- Pauri Garhwal and

further to quash the entire proceedings of the aforesaid Criminal Case No. 460/-2017 (State Vs. Rohit Singh Dagar and others) under sections 26(B)

and 26(G) of the Indian Forest Act, 1927, Police Station-Kotdwar, District Pauri Garhwal pending in the court of learned Additional Chief Judicial

Magistrate, Kotdwar, District- Pauri Garhwal.â€

4. Facts, in brief, are that on 01.01.2017, at about 03.10 hours, a First Information Report was lodged against the applicants at Police Station Kotwali

Kotdwar, District-Pauri Garhwal stating therein that secret information is received by the police that certain persons are staying in Kolu Guest House

of Forest Department situated in Kothuli Range of Lansdowne Forest Division, District Pauri Garhwal. These persons are having huge stocks of liquor

as well as illegal weapons. On said information, a team was constituted comprising of Station House Officer/Senior Sub Inspector of different police

stations. They proceeded to the place on 31.12.2016. The team comprising of police persons raided the premises of the forest guest house and found

certain weapons for which licenses were issued to the concerned persons. The police also recovered some quantity of liquor from the guest house. It

is stated that the woods were lit in an open space and tents were pitched. While checking the documents regarding permission to stay in forest guest

house inside reserved forest, the same depicted that the permission was issued only to a particular individual and there was no permission with regard

to stay of other persons though there were approximately 50 persons present.

5. The police arrested 16 accused persons and registered 4 different cases under the different provisions of law. Present Criminal Miscellaneous

Petitions are being preferred against the charge sheet as well as summoning order passed by the Additional Chief Judicial Magistrate, Kotdwar and

also for quashing the entire proceedings of respective criminal cases.

6. As per the arrest memo-cum-first information report, the team comprising of police persons had raided the premises of the forest guest house and

found certain weapons for which there were licenses issued to the concerned persons. The police has also shown recovery of some quantity of liquor

from the guest house and further, it has been alleged in the said report that the woods were lit in an open space and tents were pitched there.

Licensed weapons were also received. The prosecution has further stated in the said report that while checking the documents regarding the

permission to stay in the forest guest house inside reserved forest, the same depict that the permission was issued only in respect of a particular

individuals and there were no permissions with regard to the stay of other persons though there were approximately 50 persons found gathered at the

said point of time.

7. It is submitted by the learned Senior Advocate that the applicants/accused were of the bonafide belief that the permission of staying in the guest

house was required only by the host and further no authority of the forest department, much less, the attendant at the guest house has ever informed

the applicants/accused that the individual permission will be required for staying in the guest house situated within the reserved forest. There was no

impediment in getting the permission for entry as well as for stay in the reserved forest in favour of the applicants. The applicants/accused were mere

present in the gathering and further as per the admitted case of the prosecution, neither the liquor nor any weapons have been recovered from the

possession of the applicants/accused, nor any individual role has been assigned to the present applicants/accused with respect to the allegations made in the first information report.

8. Learned counsel appearing for the applicants/accused submitted that even the applicants/accused were not found in such part of the reserved

forest, which can be said to be sensitive for the wild animals and it is not in dispute that the presence of the applicants/accused were found in guest

house meant for stay of tourists and it cannot be said that the applicants/accused have entered into the reserved forest in order to commit any crime.

He submitted that even for the sake of arguments, accepting the allegations made in the F.I.R. to be true, no offence under Clause (b) or Clause (g)

of Sub-Section (1) of Section 26 of the Indian Forest Act has been committed by the applicants. It is submitted that a perusal of F.I.R. shows that

none of the ingredients of these two Clauses are attracted in the present set of circumstances and only for the sake of implicating the applicants, such

sections of Indian Forest Act have been mentioned.

9. It is also submitted that the applicants/accused were mere present in the gathering and further as per the admitted case of the prosecution, neither

the liquor nor any weapons have been recovered from the possession of the applicants/accused, nor any individual/ particular role has been assigned to

the present applicants/accused with respect to the allegations made in the first information report. He submitted that from a perusal of the aforesaid

provisions contained in the law as well as the allegations made in the F.I.R., it is absolutely clear that in fact, no offence is said to have been

committed by the applicants/accused and even if the forest department has given permission of three suites as well as for pitching 10 tents in the name

of one or two individuals, it can at the most be said to be irregularity on the part of forest department and due to the aforesaid irregularity, the status of

the applicants cannot be said to be of a rank trespassers in the reserved forest. Even otherwise, the Indian Forest Act does not define the trespass and

as per the definition provided for criminal trespass in Section-441 of the Indian Penal Code, mere presence of the applicants inside the reserved forest,

that too, in a premises meant for stay of human being, cannot be said to be a rank trespass and accordingly, the applicants cannot be said to be rank

trespassers.

10. It is further submitted that the applicants were not in possession of any arms or alcohol and that the respondent has registered separate cases and proceedings against the persons who were allegedly in possession of such arms or alcohol. It is submitted that it would be most unjust and unfair to continue the criminal proceedings against the applicants who are not even party to such proceedings and against whom there is no finding with respect to the alleged offences under the provisions of the Arms Act and the Excise Act. The charge sheet has been submitted against the petitioners in regard to an offence under Sub-Section (1) of Section 26 of the Indian Forest Act.

11. Learned Counsel further submitted that the provisions as mentioned are directory and not mandatory and, in any event, the alleged offences under the Arms Act and the Excise Act are specific to certain accused persons only. Besides, the matters pertaining to such offences under the Arms Act and the Excise Act have already been registered under separate proceedings and the orders have been issued by the learned Magistrate in such proceedings. The applicants herein have no concern at all with the proceedings initiated against other accused persons under the provisions of Arms Act and Excise Act. Thus, the proceedings initiated against other co-accused persons have no concern with the present applicants. Continuation of criminal proceedings against the applicants under Section 26 of the Indian Forest Act would lead to unnecessary harassment of the applicants, who are innocent. Continuation of criminal proceedings against the applicants would amount to a sheer abuse of the process of law, thus, the criminal proceedings pending against the present applicants for the offence punishable under Section 26 of the Indian Forest Act are liable to be quashed.

12. Learned counsel for the applicants further submitted that the applicants have neither committed any offence nor have they been charged with any offence other than the alleged contravention of Section 26(1)(b) and (g) of the Indian Forest Act. Therefore, it is against the process of law to combine such trial proceedings with other proceeding involving offences with which none of the applicants herein have been charged with. It is apparent that such pleas are just being used as a method to cause harassment and hardship to the innocent applicants, by attempting to force them to

face trial, even though there is no finding in the charge sheet which would even prima facie suggest the commission of an offence under the said provisions of the Forest Act by any of the applicants herein.

13. Learned counsel for the applicants has placed reliance upon the judgment of Honâ€™ble Apex Court, State of Haryana vs. Bhajan Lal (1992)

Suppl.(1)SCC 335 and submitted that the ratio of the judgment supra is applicable to the case of the applicants. Learned counsel has submitted that on

a perusal of the averments of the first information report, the evidence collected by the Investigation Officer during investigation no prima facie case

made out against the applicants to continue the proceedings for any offence under the Forest Act and charge sheet submitted against the applicants.

The provisions of Section 26(1)(b) and (g) of the Forest Act are extracted hereunder:

â€œ26. Acts prohibited in such forests: (1) Any person who-

(a) Makes any fresh clearing prohibited by section 5; or

(b) Sets fire to a reserved forest, or, in contravention of any rules made by the [State Government] in this behalf, kindles any fire, or leaves any fire

burning, in such manner as to endanger such a forest; or who, in a reserved forest-

(c) Kindles, keeps or carries any fire excepts at such seasons as the Forest Officer may notify in this behalf;

(d) Trespasses or pastures cattle, or permits cattle to trespass;

(e) Causes any damage by negligence in felling any tree or cutting or dragging any timber;

(f) Fells, girdles, lops, taps or burns any tree or strips off the bark or leaves from, or otherwise damages, the same;

(g) Quarries stone, burns lime or charcoal, or collets, subjects to any manufacturing process, or removes, any forest-produce;

(h) Clears or breaks up any land for cultivation or any other purpose;

(i) In contravention of any rules made in this behalf by the [State Government] hunts, shoots, fishes, poisons water or sets traps or snare; or

(j) In any area in which the Elephant Preservation Act, 1879 (6 of 1879) is not in force, kills or catches elephants in contravention of any rules so

made, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or

with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid.

(2) Nothing in this section shall be deemed to prohibit;

(a) Any act done by permission in writing of the Forest Officer, or under any rule made by the [State Government], or

(b) The exercise of any right continued under clause (c) of sub-section (2) of section 15, or created by grant or contract in writing made by or on behalf of the Government under Section 23.

(c) Whenever, fire is caused wilfully or by gross negligence in a reserved forest, the [State Government] may (notwithstanding) that any penalty has

been inflicted under this Section) direct that in such forest or any portion thereof the exercise of all rights or pasture or to forest " produce shall be

suspended for such period as it thinks fit.

State Amendment- (Uttaranchal)- In its application to the State of Uttaranchal, in S. 26, sub-section (1)-

(i) In Cl. (b), after the words "reserved forest", insert or to a forest in the land in respect of which a notification under Section 4 has been issued.

(ii) In Cl. (e), for the word "dragging", substitute "removing",

(iii) In Cl. (f), after the words "the same", insert, "or any forest produce"

(iv) For the words "shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five

hundred rupees, or with both, "substitute" shall, for an act described under clause (b) or clause

(f) or clause (g) or clause (h), be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five

thousand rupees, or with both and on the second and every subsequent conviction for the same offence, with imprisonment for a term which may

extend to two years, or with fine which may extend to twenty thousand rupees but which shall not be less than five thousand rupees, or with both, and

for an act described under any of the other clauses, be punishable with imprisonment for a term which may extend to six months or with fine which

may extend to one thousand rupees, or with both, and on the second and every subsequent conviction for the same offence, with imprisonment which

may extend to six months, or with fine which may extend to two thousand rupees, or with both,â€- Uttaranchal Act 10 of 2002, S.3.â€

14. Learned counsel for the applicant drew attention of this Court towards a judgment of Honâ€™ble Apex Court rendered in *Inder Mohan Goswami*

and another vs State of Uttaranchal and others, (2007) 12 SCC 1, and placed reliance on the following paragraphs:

â€23. This court in a number of cases has laid down the scope and ambit of courts powers under section 482 Cr.P.C. Every High Court has inherent

power to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of

the Court.

Inherent power under section 482 Cr.P.C. can be exercised:

(i) to give effect to an order under the Code;

(ii) to prevent abuse of the process of court, and

(iii) to otherwise secure the ends of justice.

24. Inherent powers under section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such

exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of

the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent

powers in absence of specific provisions in the Statute.

27. The powers possessed by the High Court under section 482 of the Code are very wide and the very plenitude of the power requires great caution

in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not

be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a *prima facie* decision in a case where all the facts

are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual

or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be

laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage, 46. The court

must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressure

the accused. On analysis, of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that

would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 Cr.P.C. though wide has to be exercised

sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the Statute itself and in the aforementioned

cases. In view of the settled legal position, the impugned judgment cannot be sustained.â€

15. I have considered the submission of learned counsel for the parties and carefully perused the record.

16. It is not in dispute that applicants were present in the Kolu Guest House of the Forest Department. Their presence with others in the forest guest

house is not in dispute. Important thing is that the Forest Department itself gave permission of three suites as well as for pitching 10 tents in the name

of one or more persons. Grant of such permission would certainly mean that the competent authority, which granted permission, was fully aware about

the fact that the three suites and 10 tents would be occupied and used by more persons. There was no illegality in allotting the suites and tents in

favour of one person. There is nothing on record to suggest that forest department officials prevented them from entering the campus of guest house.

Therefore, stand of Forest Department that since permission was granted in the name of one or two person, the suites and tents could not be

occupied/ used by more person is absolutely wrong. Gathering of some more persons at a place where permission was granted by a competent

authority for three suites and ten tents cannot, at all, be said illegal gathering. Their presence was absolutely valid and they cannot be said rank

trespassers in the said campus. First, granting valid permission for three suites and ten tents and then initiating legal proceeding against them is an

abuse of process of law.

17. Another allegation against the applicants is that woods were lit in an open space in the vicinity of the guest house. There is no allegation that

applicants set fire to a reserved forest or they kindled fire or left fire burning in such manner as to endanger reserved forest. There is also no

allegation that applicants burnt lime/ charcoal or removed any forest produce. Thus, it is clear that provisions of the Forest Act, under which applicants

have been charged and summoning orders have been issued, do not attract. Moreover, the record does not suggest that any such complaint was made

by the forest official before lodging of F.I.R. by the complainant. No specific allegations have been made against the applicants that they have

committed an offence under Section 26 of the Indian Forest Act. Mere submission of charge sheet would not be sufficient to punish the applicants.

The learned Magistrate, in a cryptic manner, has summoned the applicants.

18. In view of this Court the continuation of proceedings against the applicants for the offence punishable under Section 26 of the Indian Forest Act is

a sheer abuse of process of law and would lead to patent miscarriage of justice with the applicants. Thus, this Court is of the firm opinion that the

charge sheet as well as the summoning orders are liable to be quashed. Consequently the entire proceedings pending against the applicants pursuant to

the impugned charge sheet are also liable to be quashed.

19. Consequently, the Charge sheet dated 16. 03.2017 as well as summoning order dated 20.04.2017 passed by learned Additional Chief Judicial

Magistrate, Kotdwar, District Pauri Garhwal in Criminal Case No.460 of 2017 under Section 26(1)(b) and (g) of the Indian Forest Act, 1927, Police

Station Kotdwar, District Pauri Garhwal are set aside and entire proceedings of Criminal Case No.460 of 2017 State vs. Rohit Singh Dagar and

Others, under Section 26(1)(b) and (g) of the Indian Forest Act, 1927, pending in the Court of learned Additional Chief Judicial Magistrate, Kotdwar,

District Pauri Garhwal are quashed so far as present applicants are concerned. The aforementioned Criminal Misc. Applications under Section 482 of

Cr.P.C. are hereby allowed.

20. All pending applications also stand disposed of.

21. Let copy of the judgment passed by this Court be placed on record of all the connected matters.