
K.K. Singh & Others Vs State of Uttarakhand & Others

Criminal Miscellaneous Application No. 722 Of 2012, 412 Of 2013

Court: Uttarakhand High Court

Date of Decision: Dec. 5, 2018

Acts Referred:

Code of Criminal Procedure, 1973 â€” Section 482#Wild Life (Protection) Act, 1972 â€” Section 9, 51, 51(6)#Indian Forest Act, 1927 â€” Section 26, 26(1)

Hon'ble Judges: Manoj K. Tiwari, J

Bench: Single Bench

Advocate: B.S. Adhikari, S.S. Adhikari

Final Decision: Dismissed

Judgement

Manoj K. Tiwari, J.

1. Since both these cases arise out of same incident, therefore, both these applications under Section 482 Cr.P.C. are being heard and decided by this

common judgment.

2. Brief facts of the case, in nutshell, are that the applicant (K.K. Singh) is a pilot, who was operating the helicopter owned by applicant No. 1 - Mr.

Ashok Sawhny (in C482 No. 412 of 2013), who is proprietor of a firm, namely, M/s Monarch International. On 01.05.2011, applicant (K.K. Singh)

landed the helicopter on Ananda Helipad at Narendra Nagar, District Tehri Garhwal. It was the allegation in the First Information Report that the

applicant (K.K. Singh - Pilot) landed his helicopter just before landing of the helicopter of Hon'ble Chief Minister of the State, therefore, there

was a threat to Hon'ble Chief Minister due to the said landing. Police investigated the matter and found nothing against the applicant (K.K. Singh),

consequently, police submitted final report in the matter. Subsequently, State of Uttarakhand filed a complaint through Divisional Forest Officer in the

court of learned Chief Judicial Magistrate, Nagraunda Nagar, Tehri Garhwal against the applicants, under Section 9 read with Section 51 of the Wild

Life (Protection) Act, 1972 and Section 26 of the Indian Forest Act, 1927. It was the allegation in the said complaint that Land, where helicopter had

landed, belongs to Reserve Forest and necessary permission was not obtained in this regard. It was further alleged that due to sound of the helicopter,

calf of a Cheetal fell in a gorge and got injured. On the basis of said complaint, learned Judicial Magistrate, Narendra Nagar, Tehri Garhwal

summoned the applicant (in C482 No. 722 of 2012) vide order dated 02.04.2012 under Section 26(1) of Indian Forest Act and Section 51(6) of the

Wild Life (Protection) Act, 1972. The said complaint was registered as Criminal Complaint Case No. 187 of 2012. Subsequently, applicants (in C482

No. 412 of 2013) were discharged by learned Magistrate. Feeling aggrieved, applicant (K.K. Singh), filed criminal miscellaneous application (C482

No. 722 of 2012) before this Court, wherein learned co-ordinate Bench of this Court stayed the proceedings of the said criminal complaint vide order

dated 16.07.2012.

3. Thereafter, Forest Department filed Criminal Revision, along with delay condonation application before learned District & Sessions Judge, Tehri

Garhwal on 4.09.2012 against the discharge of the applicants (in C482 No. 412 of 2013). Since the Forest Department did not array applicants as

party in the criminal revision, therefore, learned District & Sessions Judge granted time to implead them as respondents. Consequently, Forest

Department moved impleadment application, which was allowed vide order dated 8.10.2012 and notices were issued to the applicants on the delay

condonation application. Thereafter, applicants preferred criminal miscellaneous application No. 1265 of 2012 before this Court, which was dismissed

with cost of Rs. 25,000/- on each of the applicants by coordinate Bench of this Court vide order dated 27.11.2012. The operative portion of the same

reads as under:-

“Having heard learned counsel for the applicants, this Court feels that the revision is pending for its adjudication before the court of Sessions and

the learned Sessions Judge has issued notice to the applicants to present their arguments, if any. Instead of presenting their defence in the court of

Sessions, applicants have rushed up to this Court for invoking powers under Section 482 Cr.P.C. This is an utter abuse of process of law and sheer

wastage of precious time of Court, so this petition is dismissed at the threshold with costs of Rs.25,000/- (Rupees Twenty Five Thousand only) on

each of the applicants. The Collector, Tehri Garhwal shall take appropriate steps for recovery of this penalty from both the applicants and deposit the

same in the Government Treasury.”

4. Subsequently, applicants preferred special leave petition before Hon'ble Supreme Court, which was disposed of vide order dated 01.02.2013,

which is extracted below:-

“Since the District & Sessions Judge, Tehri Garhwal is seized with the matter, we find no reason to entertain this special leave petition, which is

accordingly dismissed with a direction to the Sessions Court to dispose of the revision petition within a period of three months.

Order directing costs, in the impugned order, stands deleted.

5. Pursuant to the order of Hon'ble Supreme Court, learned District & Sessions Judge, Tehri Garhwal heard and decided the revision petition filed

by Forest Department vide order dated 19.03.2013, against which criminal miscellaneous application No. 412 of 2013 has been filed invoking inherent

jurisdiction of this Court under Section 482 Cr.P.C.

6. Heard learned counsel for the parties and perused the record.

7. Mr. B.S. Adhikari, learned counsel for the applicants submits that no offence is made out against the applicants for the offence under Section 9

read with Section 51 of the Wild Life (Protection) Act and Section 26 of the Indian Forest Act, 1927, as there is no allegation of hunting against the

present applicants. He further submits that the land, where the helicopter had landed, does not come under the Forest Area, therefore, the complaint

lodged by the Forest Department against the applicants is based on false allegations.

8. Per contra, learned A.G.A. for the State submits that Helipad in question is situated within the reserved forest area. In support of his contention, he

has relied upon U.P. Government Order dated 23.11.1965 (No. 6854/17-292-65 dated 23.11.1965), according to which land in dispute comes within

Reserved Forest under the Indian Forest Act, 1927. He further submits that necessary permission from the competent authority for landing the

helicopter on the land in question had also not been obtained by the applicants. Therefore, the applicants have committed offence under the aforesaid

Sections.

9. Sri S.S. Adhikari, learned A.G.A. for the State further submits that summoning order is interlocutory order and summoning order should not be

disturbed by invoking section 482 of Cr.P.C. He further submits that while exercising powers under section 482 Cr.P.C., this Court cannot enter into

the questions of fact and cannot re-appreciate the evidence. He further submits that scope of Section 482 is limited and at this stage this Court has to

see only as to whether prima facie case is made out justifying the summoning of the accused or not.

10. After hearing learned counsel for the parties, I do not find any justification to interfere in the impugned summoning order passed by learned trial

court as well as the order dated 19.03.2013 passed by learned District & Sessions Judge, Tehri Garhwal against the applicants. It is settled position in

law that the Court would interfere with a summoning order or proceedings of a criminal case only in rarest of cases where the offence is not made out

or there is gross injustice to the accused-applicant. It is also settled position of law that this Court, while hearing the petition under Section 482

Cr.P.C., is not sitting as a trial court & this Court cannot take into consideration the plausible defence of the accused during the course of hearing. I

am of the view that the factual aspect of this case needs evidence to be adduced by the parties before the court concerned and the trial court after

considering the evidence on record will decide the matter in accordance with law. I am not supposed to embark upon an enquiry with regard to the

accusation of the applicants at this stage, as any judgment rendered by me would amount to pre-trial. Therefore, in view of the above facts as well as

the submission raised by learned counsel for the applicants, I do not find any abuse of process of court in this case and no flagrant injustice is also

going to be caused to the applicants in the case. The contentions, which the learned counsel for the applicants has raised before me, can be raised

during defence and evidence may also be led on those aspects.

11. Accordingly, the criminal miscellaneous applications under Section 482 Cr.P.C. filed by the applicants are dismissed. Interim order dated

16.07.2012 passed in C482 No.722 of 2012 stands vacated.

12. Let the applicants appear before the court concerned on or before 03.01.2019 and move bail application. It is made clear that as soon as the

applicants appear before the court below and move bail application, the same shall be considered, as far as possible on the same day itself on its merit.

In case, the bail application is deferred for any reason (including its rejection), the concerned Magistrate shall forward the papers to learned Sessions

Judge for deciding the bail application on the same day.