

Criminal Misc. Application No. 71 of 2003

Surjeet Singh & others

...Applicants.

Vs.

State of Uttaranchal
and another

...Respondents.

Hon'ble Irshad Hussain,J.:

This petition under section 482 of the Code of Criminal Procedure (hereinafter referred to as the "Code") has been moved for quashing the proceedings in criminal case no.1435 of 2002 pending in the Court of Judicial Magistrate, Khatima, District Udham Singh Nagar.

Criminal case no.1435 of 2002 arises out of a complaint case filed against the petitioners. Another case based on the police report was also registered against the petitioners in which the report under section 173 of the Code had already been submitted and the case had been registered after the cognizance was taken on the charge-sheet by the Magistrate concerned. It is stated that on the same facts the written complaint was filed in which the statements of the witnesses under sections 200 and 202 of the Code have been recorded and the summoning order under section 204 of the Code had already been passed against the petitioners. Considering these facts, the petitioners want to have the proceedings of this complaint case stayed. Considering the facts and circumstances of the case, the provision of section 210 sub section (2) of the Code is attracted and the petitioners have a right to move an application before the concerned Magistrate so that both the cases may be tried as state case. Learned counsel for the petitioner submitted that in the state case charge-sheet has been submitted against only one accused whereas in the complaint case summons were issued against five persons. It makes little difference. Under law cognizance is taken for offences committed by miscreants. Considering this two cases irrespective of the fact that the charge-

sheet was submitted against one accused in state case and in complaint case summons were issued against the five persons may be proceeded together against the petitioners. In view of this petition is not maintainable and the same is dismissed accordingly. The petitioners may move an application before the Magistrate concerned.

29.04.2003./B.

(Irshad Hussain, J.)