

**IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL**

C 482 Criminal Misc. Application No. 383 of 2009

Gandhi Shah
and others.

.....Applicants.

Versus

Ramjanm Soni

.....Respondent.

Hon'ble Alok Singh, J.

Mr. R.P. Nautiyal, learned counsel for the applicants.

Mr. B.S. Negi, learned counsel for the respondent.

This petition is filed under section 482 of Cr.P.C. challenging the summoning order dated 29.10.2007 passed by Chief Judicial Magistrate, Chamoli in criminal case no. 556 of 2007 Ramjanm Soni Vs. Ajeet Singh and Revisional Court's order dated 21.03.2009.

The main contention of the complainant is that he had gone out on 29.04.2007 to finish his business work. On the same day, in the noon at about 2.00 – 2.30 p.m., all the accused persons came in the house of the complainant and asked about the complainant and said we would finish him (the complainant). Accused also said your son Dharamnath had stolen Rs. 50,000/- from our shop. All the three accused persons on the call of Suresh Shah (accused no. 3) took Dharamnath along forcefully. The incident was seen by Mohan Prasad, Jugal Kishore Singh and other family members of the complainant. Complainant also came to know that accused have also taken along with them Rs. 47000/- in cash, 1 kg silver

ornaments, 18 gms gold locket and 4 gms gold finger ring. It is further contended by the complainant that after coming to his house he came to know about the above incident and tried to lodge report with the police. Police did not receive his complaint and he was asked by the police to search your son yourself and thereafter you may lodge your report in police station – Gopeshwar. He was further told that matter has been communicated to the police Inspector, Gopeshwar. It is further alleged by the complainant that thereafter, he came to know that his son Dharamnath was lodge in 'Juvenile Home' in connection with case of theft which was registered against him on 30.04.2007. On his application, learned Trial Court released his son from Juvenile Home and handed over his custody to the complainant. His son has told him that he was beaten in the room of Suresh Shah and thereafter he was taken to the room of accused no. 1 and 2 and there also again he was beaten up and next day he was handed over to the police station – Gopeshwar. Complainant further alleged that he got his son medically examined on 09.05.2007. Application was sent to the Chief Minister and Ministry of Human Rights on 12.05.2007.

Statements of complainant were recorded under section 200 Cr.P.C. while statements of Jugal Kishore Singh, Rukmani Devi Mohan Prasad, Dharamnath were recorded under section 202 Cr.P.C.

Learned Chief Judicial Magistrate thereafter, passed summoning order dated 29.10.2007 which was challenged before the Sessions Judge in criminal revision no. 50 of 2007 (Ajit Kumar and others Vs. State of Uttarakhand). Learned Sessions Judge vide order dated 21.03.2009

dismissed the revision, thereby approving the summoning order.

Learned counsel for the complainant vehemently argued that summoning order is interlocutory order and hence, neither revision under section 397 / 401 Cr.P.C. is maintainable nor summoning order should be disturbed by invoking section 482 of Cr.P.C. He further argued that while exercising powers under section 482 Cr.P.C., this court cannot enter into the question of facts and cannot re-appreciate the evidence. He further argued 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.

Hon'ble Apex Court in the matter of Amarnath Vs. State of Haryana reported in 1977 (4) SCC 137 has observed as under:

"10.It was only with the passing of the impugned order that the proceedings started and the question of the appellants being put up for trial arose for the first time. This was undoubtedly a valuable right which the appellants possessed and which was being denied to them by the impugned order. It cannot, therefore, be said that the appellants were not at all prejudiced, or that any right of their's was not involved by the impugned order. It is difficult to hold that the impugned order summoning the appellants straightaway was merely an interlocutory order which could not be revised by the High Court under sub sections (1) and (2) of Section 397 of the 1973 Code. The order of the Judicial Magistrate summoning the appellants in the circumstances of the

present case, particularly having regard to what had preceded, was undoubtedly a matter of moment and a valuable right of the appellants had been taken away by the Magistrate's passing an order prima facie in a mechanical fashion without applying his mind. We are therefore, satisfied that the order impugned was one which was a matter of moment and which did involve a decision regarding the rights of the appellants. If the appellants were not summoned, then they could not have faced the trial at all, but by compelling the appellants to face a trial without proper application of mind cannot be held to be an interlocutory matter but one which decided a serious question as to the rights of the appellants to be put on trial."

Judgment of Amarnath (Supra) was relied upon in the latest judgment of Supreme Court in the matter of Dhariwal Tobacco Products Ltd. Vs. State of Maharashtra reported in 2009 (2) SCC 370. In para 11 Hon'ble Apex Court has held as under:

".....It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone the courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the court would be justified to quash any proceeding if it finds that initiation / continuance of it amounts to

abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if allegations are accepted in toto."

In view of the dictum of Hon'ble Apex Court, I hold that this court while exercising powers under section 482 Cr.P.C. has to see as to whether summoning order is justified / legal.

From perusal of the record, it seems that son of the complainant Dharamnath was involved in the offence of theft and was sent to juvenile home under the judicial order on 30.04.2007 and was released from there on 08.05.2007. In view of this the story of kidnapping / abduction on 29.04.2007 prima facie seems to be false concocted and after thought. Neither complaint nor statements have any whisper that police of Gopeshwar in criminal conspiracy with the present accused falsely implicated his son on 30.04.2007.

Admittedly, complainant was not present on the spot at time of alleged incident. However, in the complaint and statement under section 200 Cr.P.C. he stated that accused have taken Rs. 47000/- in cash, 1 kg silver ornaments, 18 gms gold locket and 4 gms gold finger ring. Neither his wife PW 2 - Rukmani Devi nor his son Dharamnath made any statement of taking away Rs. 47000/- in cash, 1 kg silver ornaments, 18 gms gold locket

and 4 gms gold finger ring rather they made casual statement.

From the perusal of the record, I find that Dharamnath was medically examined on 09.05.2007. He remained in juvenile home from 30.04.2007 to 08.05.2007. This is very strange, he has not made any complaint about his injuries either to the court or to the Superintendent of the juvenile home between 30.04.2007 to 08.05.2007 and his injuries and pain did not come in the knowledge of Superintendent of Juvenile Home and officer of the court sending him to Juvenile Home. As stated earlier complainant's son Dharamnath was produced before the court on 30.04.2007 in the case of theft. It seems to take defence in the case of theft complainant has cooked story of kidnapping / abduction on 29.04.2007. None should be permitted to abuse process of law by filing frivolous complaint with the story which at the threshold seems to be concocted and improbable.

Now, I proceed to examine the record. From the perusal of impugned summoning order dated 29.10.02007, learned Magistrate nowhere discussed statements recorded under sections 200 and 202 Cr.P.C. Not only this he in the casual manner observed that from the statements recorded offence under section 363, 323, 504, 506 IPC seems to have been committed prima facie by the accused.

On this sole ground order dated 29.10.2007 is liable to be quashed with the direction to the learned Trial Court to re-examine the matter.

In view of the above petition is allowed. Impugned order dated 29.10.2007 passed by Chief Judicial Magistrate

and order dated 21.03.2009 passed by Sessions Judge are hereby quashed. Learned Chief Judicial Magistrate is directed to pass fresh order on the complaint of the respondent.

(Alok Singh, J.)
30.11.2009

SKS