

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

**CRIMINAL APPLICATION NO.414 OF 2009
(U/s 482 Of Cr.P.C.)**

Tanuj Kumar & others

.....Applicants

Versus

State of Uttarakhand & another

.....Respondents

Dated: October 29, 2010

Sri AM Saklani, Adv. for the applicants
Sri Nandan Arya, AGA for the State
Sri DCS Rawat, Adv. for respondent no.2

HON. DHARAM VEER, J.

This application, moved u/s 482 of the Code of Criminal Procedure, 1973 (*hereinafter to be referred as Cr.P.C.*), is directed for quashing the summoning/cognizance order dated 4. 3.2008 passed by the Addl. CJM, Kashipur, US Nagar in Crl. Case No.617/07, Hargovind Singh Vs. Virendra Singh & others.

Heard learned counsel for the petitioner and perused the entire material on record.

In nutshell the facts of the case are that respondent no.2- Hargovind Singh moved an application u/s 156(3) Cr.P.C. against the petitioners for the offences punishable u/s 323/504/506/325/427 IPC. On that application, the police was directed by the Magistrate concerned to register and investigate the matter. After that on 30.5.2006, the police submitted the final report, against which the respondent no.2 filed a protest petition. Vide order-dated 1.3.07, the Magistrate concerned summoned the petitioner Virendra Singh u/s 504/506/325 IPC while the petitioners Tanuj and Rajpal Singh were summoned u/s 504/427 IPC. Against that order, the petitioners preferred a revision, which was allowed by the Sessions Judge and the matter was remanded to the trial court. On 4.3.2008, the trial court after appreciating the entire material available on record, *prima facie* found the offences punishable u/s 504/427 IPC made out against the petitioners Tanuj Kumar and Rajpal Singh and also the offences *prima facie made out* u/s 504/506/325 IPC against the petitioner Virendra. Hence this petition.

Learned counsel for the petitioners submitted the learned Magistrate has passed the impugned order in a technical manner and he had not applied the mind while passing the impugned order and the said order is not as per law. On the contrary, learned AGA for the State, while completely supporting the order passed the trial court, submitted that the learned Magistrate has passed the order as per law.

I find force in the argument advanced on behalf of learned AGA for the State that the learned Magistrate has rightly passed the impugned summoning order after examining the entire facts and circumstances of the case. The learned Magistrate has passed the impugned order as per the settled law as well as in the light of a judgment of Hon'ble Apex Court in the case of *Minu Kumar & another v. State of Bihar & others* reported in (2006) 2 SCC (Cri) 310, wherein it has been held in para 11 as under: -

*“11. When a report forwarded by the police to the Magistrate under Section 173(2)(i) is placed before him several situations arise: the report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further investigation under Section 156(3) and require the police to make a further report. **The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he again has option of adopting one of the three courses open i.e. (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police under Section 156(3).** The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(b) and direct the issue*

of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him to act under Section 200 or Section 202 also. (See India Carat (P) Ltd. v. State of Karnataka)”

In view of the above quoted judgment, it is clear that when a report concluding that no offence appears to have been committed is produced, in that case, there are three courses open before the Magistrate (1) he may accept the report and drop the proceeding; or (2) **he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process**; or (3) he may direct further investigation to be made by the police under section 156(3). In the present case, the learned Magistrate has adopted the **second course** thereby quashed the final report, took cognizance and accordingly summoned the petitioners to face trial. Hence, in view of judgment of Hon’ble Apex Court in case of Minu Kumar (**Supra**), the impugned order passed by the trial court appears to be perfectly justified and as per law.

For the reasons recorded above, there is no force in the application. The application C482 is devoid of merits and is hereby dismissed *in limine*. Interim order dated 18.8.2009 is vacated.

(Dharam Veer, J.)
October 29, 2010

Rdang