

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application(C482) No. 497 of 2004

1. Smt. Subhodhani
W/o Shri Bhaddu
2. Smt. Mayawati
W/o Shri Murli
Both R/o Village Saurakhal,
Patwari Circle Saurakhal
Tehsil Jakholi, District Rudraprayag.

.....Petitioners

Versus

1. State of Uttaranchal
2. Smt. Kalpeshwari Devi
W/o Shri Surendra Lal
R/o Village Saurakhal,
Patwari Circle Saurakhal
Tehsil Jakholi, District Rudraprayag.

.....Respondents

Shri R.P. Nautiyal, Advocate, present for the petitioners. Shri M.A. Khan, Brief Holder, present for the State. None present for the respondent no. 2

Hon'ble Prafulla C. Pant, J.

By means of this petition moved under
section 482 of Code of Criminal Procedure

1973, (for short Cr.P.C,) the petitioners have sought quashing of the order dated 08.07.2004, passed by the trial court (Judicial Magistrate, Rudraprayag) whereby the petitioners have been summoned under section 319 Cr.P.C, to face the trial. The petitioners have also challenged the order dated 24.08.2004, passed by Sessions Judge, Rudraprayag, in criminal revision no. 22 of 2004, whereby said court has affirmed the order passed by the trial court.

2. Brief facts of the case are that respondent no. 2 Kalpeshwari Devi (complainant) got married to Surendra Lal (accused) about five years before filing of complaint. Petitioner no. 1 Subhodhani is mother-in-law and petitioner no. 2, Mayawati Sister-in-law (Jethani) of respondent no. 2 Kapeshwari Devi (complainant). The complainant filed a criminal complaint which was registered as criminal case no. 4 of 2004 (new no. 289 of 2004) before the trial court, in which after recording the statement of the complainant under section 200, and that of witness under section 202 Cr.P.C, Surendra Lal (husband) was summoned by the trial court

to face the trial, in respect of offences punishable under section 498A, 504, 506 IPC.

3. When the trial of said case was at the stage of section 244 Cr.P.C, petitioners names were also mentioned by PW1 Kalpeshwari Devi relating to harassment for non fulfilment of demand of dowry. The trial court (Judicial Magistrate, Rudraprayag) excersing power under section 319 Cr.P.C, summoned the petitioners to face the trial. Said order dated 08.07.2004, was challenged by the petitioners before the revisional court (Sessions Judge, Rudraprayag). However, the same was also dismissed. Hence this petition.

4. Learned counsel for the petitioners submitted that the powers under section 319 Cr.P.C, are not supposed to be exercised likely. It is contended that it is abuse of process of law to summon anyone to face the trial only on the ground that the complainant has named him/her in his examination under section 244 of Cr.P.C. I agree with the argument advanced on behalf

of the petitioners that the powers under section 319 Cr.P.C, are to be exercised cautiously. There are chances of adding names of the persons who are innocent and with whom the complainant has inimical relations. The statement recorded by the Magistrate under section 200 Cr.P.C, does not show that what specific role was played by the present petitioners namely Subhodhani and Mayawati relating to the alleged offences. The statement of the witness Puran Lal recorded under section 202 Cr.P.C, also does not show any specific role of the petitioners. The Special Judicial Magistrate who recorded the statement of the complainant and that of the witness under section 200/202 Cr.P.C, has mentioned that the 'marpeet' was allegedly done by accused Surendra and he criminally intimidated the complainant. And that is why only he (Surendra) was summoned to face the trial.

5. Perusal of papers shows that after recording statement under section 244 Cr.P.C, it was only Surendra Lal against whom charge was framed. However, at the stage 246 Cr.P.C, suddenly the petitioners

were directed to be summoned as an accused by the trial court. This approach on the part of the trial court does not appear to be cautious. There must be strong reasons for the trial court before it exercises powers under section 319 Cr.P.C, to summon someone who was not earlier summoned as accused. The impugned order dated 08.07.2004, shows that the trial court simply acted upon the application moved by the complainant to summon the petitioners Subhodhani and Mayawati. It is not clear from the impugned order that why 'Bhaddu' who was also prayed to be summoned by the complainant was not summoned. Bare perusal of impugned order shows that the trial court has directed that Surendra Lal be also summoned. It is pertinent to mention here that Surendra Lal has already been summoned and he was already facing the trial. These circumstances indicate that the power is exercised under section 319 Cr.P.C, by the Magistrate without application of mind. Therefore, the impugned orders cannot be sustained.

6. For the reasons as discussed above the petition under section 482 of Cr.P.C, is

allowed. The impugned order dated 08.07.2004, so far as it relates to petitioner Subhodhani and Mayawati is quashed. To that extent the impugned order dated 24.08.2004, passed by the revisional court (Sessions Judge, Rudraprayag) in criminal revision no. 22 of 2004, also stands quashed. The trial court may proceed further as against the accused Surendra Lal. Registry is directed to inform the court concerned.

(Prafulla C. Pant, J.)

Dt:31.05.2010
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