

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application No. 443/2006

Liyakat

.....Petitioner

Versus

State of Uttaranchal & Ors.

.....Respondents

September 30, 2010

Hon'ble Dharam Veer, J.

Heard Mr. Navneet Kaushik, Advocate for the petitioner and Mr. Nandan Arya, AGA for the State and Mr. Lalit Sharma, Advocate for the respondent no. 3.

By means of this petition, moved under Section 482 of Code of Criminal Procedure, 1973 (for short, CrPC), the petitioner has prayed for quashing the summoning order dated 19.4.2006 passed by the II Additional Civil Judge (Jr. Div.), Rudrapur in Misc. Case No. 02/2006, Smt. Nanhi Devi v. Sarvan & Ors. under Section 364, 302 IPC.

Facts, in brief, are that on 30.8.2004, the entry was made in the GD vide GD rapat no. 57 at 23.30 hours that SI VS Rana along SI Umed Singh Danu came back from Kichha dam after searching Virendra S/o Munshi Lal by the PAC **Gotakhor**, but they could not search Virender. Nanhu, Rajpal, Sarvan Kumar and Bablu were also enquired about Virendra as they had allegedly gone along with him to catch the fish. All of them told that Virendra **drown in the tides** of dam, but the family members of Virendra were doubting on the aforesaid people who had gone along with him to catch the fish.

Thereafter an application was moved on 4.9.2004 before the SSP, Rudrapur by Smt. Nanhi Devi with the averments that on 29.8.2004, she had gone for the work in Khurpia farm. When she came back at about 6 pm then she asked from her elder son about Virendra. Her elder son replied that Sarvan and Nanhu had taken him along with them. Then she searched Virendra in their houses, but he could not be traced. Meanwhile one Bhoop Singh met her who told her to go to Kichha dam. When she reached there, then she came to know

that her son Virendra was drown in the dam and she has full doubt on Nanhu and Sarvan, who had taken her son from the house with intention to kill him and later on drown him in the dam. This information was also orally given in the police station on 29.8.2004. Search was made for the recovery of the dead body of her son but it could not be recovered. Nanhu and Sarvan had also not given her any satisfactory answer.

When no action was taken on the aforesaid report then she moved second application on 19.11.2004 to SSP, Rudrapur with the same averments. Thereafter she filed a complaint under Section 156(3) CrPC on 13.12.2004 before the Judicial Magistrate, Rudrapur with the same averments which she had alleged in her aforesaid applications. Besides the aforesaid averments, she also alleged in para 5 of her complaint that after one week of the said incident she had gone to Khurpia farm for work then Jaiprakash of the police department and the petitioner Liyakat, Pradhan had met her son Bhagwan Das and they called the complainant alone and told that a paper has been received from the Minister and asked to put her thumb impression on that paper. She put her thumb impression on that paper. The police personnel told her that he is investigating into the matter. Thereafter the complainant came to know that the petitioner and the said policeman in collusion with the accused persons have taken her thumb impression on the said paper which was meant for the compromise. On 4.1.2005, the learned Magistrate directed the concerned police station to register and investigate the matter. Thereafter on 9.1.2005, the case was registered against the petitioner and other co-accused as case crime no. 51/2005 under Section 364/302/201 IPC. After the investigation, the I.O. submitted the final report, against which the complainant filed protest petition. Learned Magistrate recorded the statement of the complainant under Section 200 CrPC and the statement of the witnesses under Section 202 CrPC and thereafter the present petitioner and the other co-accused were summoned by the trial court vide order dated 19.4.2006 to face the trial under Section 364 and 302 IPC.

Learned Counsel for the petitioner submitted that from the bare perusal of the complaint under Section 156(3) CrPC and the protest petition and also the statements under Section 200 and 202 CrPC, no offence under Section 364 and 302 is made out against the petitioner, who has been falsely implicated in this case. I find substance in the argument of learned Counsel. In the complaint and protest petition as well as on the basis of statement recorded under Section 200 and 202 CrPC, the only allegation made against the present petitioner is that he had taken the thumb impression of the complainant on a blank paper which she subsequently came to know that it was compromise paper.

For the sake of convenience, Section 364 and 302 IPC are reproduced as under:

“364. Kidnapping or abducting in order to murder.—Whoever kidnaps or abducts any person in order that such person may be murdered or may be so disposed of as to be put in danger of being murdered, shall be punished with imprisonment of life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.”

302. Punishment for murder.—Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.”

State has filed a supplementary counter affidavit and the judgment and order dated 9.8.2010 passed by the Sessions Judge, Udham Singh Nagar has been annexed therewith whereby the co-accused Sarvan and Nanhu have been acquitted of the charges levelled against them under Section 364 and 302 IPC.

Undisputedly, in view of the aforesaid discussion, no offence of kidnapping and murder is made out against the petitioner inasmuch as the essential ingredients of section 302

and 364 IPC are missing against the petitioner in the complaint and the protest petition as well as in the statements recorded under Section 200 and 202 CrPC. Furthermore, co-accused Nanhu and Sarvan, alleged to be main accused, have been acquitted by the trial court for the charge of offence punishable under Section 364 and 302 IPC.

As stated above, the only allegation against the petitioner is that he obtained thumb impression on the complainant on a blank paper and subsequently the complainant came to know that the said paper was meant for writing the compromise. But undisputedly no compromise paper has been filed so far in any court. Thus, there is no evidence that the applicant has got thumb impression of the complainant on any blank paper.

It is settled law that when the basic ingredients of the offence are missing and no *prima facie* case is made out against the petitioner, then permitting such a trial to continue and to compel the petitioner to face the criminal trial under Section 302/364 IPC would be totally unjustified leading to abuse of process of law.

Having considered the arguments advanced by learned counsel for the petitioner; perusal of complaint, protest petition, statements recorded under Section 200 and 202 CrPC and other papers available on record, I am of the view that the impugned summoning order dated 19.4.2006 is not correct and justified and the same is liable to be quashed in respect of the petitioner.

Accordingly, for the reasons recorded above, the petition is allowed. Summoning order dated 19.4.2006 passed by the II Additional Civil Judge (Jr. Div.), Rudrapur in Misc. Case No. 02/2006, Smt. Nanhi Devi v. Sarvan & Ors. under Section 364, 302 IPC is hereby quashed in respect of the petitioner.

(Dharam Veer, J.)

30.9.2010

