

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

CRIMINAL MISCELLANEOUS APPLICATION No. 374/2007

(Under Section 482 of the CrPC)

Ganga Singh

.....Applicant

Versus

State of Uttarakhand & Another

.....Respondents

Mr. Siddhartha Sah, Advocate, for the applicant.

Mr. P.S. Bohara, Brief Holder, for the State.

Mr. Lalit Sharma, Advocate, for the private respondent no. 2.

With

CRIMINAL MISCELLANEOUS APPLICATION No. 364/2007

(Under Section 482 of the CrPC)

Atul Kumar Kukreti & Another

.....Applicants

Versus

State of Uttarakhand & Others

.....Respondents

Mr. K.K. Sah, Advocate, for the applicants.

Mr. P.S. Bohara, Brief Holder, for the State.

Mr. Lalit Sharma, Advocate, for the private respondent no. 2.

Mr. Siddhartha Sah, Advocate, for the respondent no. 3.

30th November, 2011

Hon'ble Servesh Kumar Gupta, J.

Since both these petitions have been filed challenging the same order of cognizance dated 14.11.2005, passed by the Judicial Magistrate, Nainital in Criminal Complaint Case No. 109/2005, *Smt. Bhagirathi Devi v. Ganga Singh & Others*, hence, both these petitions are being decided by this common judgment and order.

2. Having heard learned Counsel for the parties and on perusal of the papers on record, it transpires that Smt. Bhagirathi Devi (respondent no. 2) was the president of Joint Forest Management Committee in village Parbada Patti Sundarkhal, Tehsil Dhari, District Nainital. In her capacity as such, she was operating the account nos. 2050

and 2080 held with Bhatelia branch of Nainital Almora Regional Rural Bank. She deposited ₹ 1,75,041/- in the said bank accounts as cost of the forest produce. It was the Government money, and had to be utilized for the development of forest and other like purposes at the instance of the President of the said committee.

3. As the time advanced, a fresh notification was issued for conducting the elections *de novo*, which was challenged by Smt. Bhagirathi Devi by filing the Writ Petition No. 631 (M/B) 2001 before this Court, which was dismissed on merits on 4.7.2001 with the result that the elections were conducted on 23.9.2001, in which Ganga Singh was elected as Sarpanch. In his capacity as Sarpanch, he also became the *ex officio* President of the said Joint Forest Management Committee. Besides Ganga Singh, other members were also elected as Panches in presence of the representative of the Government, namely, Patwari Sundarkhal, at the spot. Election of the Sarpanch and Panches was ratified by the Forest Panchayat Officer, Nainital. Pursuant to their election, the charge was handed over by Smt. Bhagirathi Devi to Ganga Singh, her successor in the office, on 23.9.2001 itself. The aforementioned bank was also informed by the Forest Range Officer of the area intimating the name of Ganga Singh and verifying his signatures to operate the said accounts. This information is contained in letter dated 31.5.2003 filed as Annexure 6 to the petition no. 374/2007.

4. After becoming President of the said Committee, Ganga Singh, in consultation with other Panches, withdrew ₹ 60,000/- on 20.9.2003 from the aforementioned accounts for advancement of the forest work.

5. On 14.10.2003, Smt. Bhagirathi Devi filed a complaint against Ganga Singh, her successor in the office as well as against Atul Kumar Kukreti, Branch Manager of the Bhatalia Branch of the said bank and the General Manager of the said bank. She alleged in her complaint that Ganga Singh, in collusion with the aforesaid two officers of the bank, withdrew ₹ 60,000/- and they misused this money for their own personal gains. Smt. Bhagirathi Devi examined herself under Section 200 CrPC and Mr. Kharak Singh, her husband, was examined under Section 202 CrPC. Thereafter, the learned Magistrate, took cognizance of the offences on 14.11.2003 and summoned the accused applicants to face trial for the offences punishable under Section 406, 409, 420, 467, 468, 471 IPC. This order of cognizance has been challenged in both the petitions.

6. As has been disclosed above, Ganga Singh was duly elected as Sarpanch and by virtue thereof, he became *ex officio* president of the Joint Forest Management Committee of the village. Thus, he became the successor of Smt. Bhagirathi Devi. Ganga Singh was, accordingly, authorized to operate the accounts of the Committee held with Bhatalia Branch of Nainital Almora Regional Rural Bank. The authorization letter was duly sent to the said bank by the competent officers of the Government verifying the signatures of Ganga Singh, who withdrew the money for the development of the forest as per rules of the Committee. Ganga Singh has done nothing wrong by withdrawing the said money, much less the task of Bank Manager of the concerned branch was quite in compliance of their official duties. Filing of complaint by Smt. Bhagirathi Devi against Ganga Singh and two other officers of the bank is sheer misuse of the process of Court. Hence, the impugned order of cognizance and the complaint are liable to be quashed.

7. Resultantly, both the petitions are allowed. The impugned complaint and the order of cognizance dated 14.11.2005, passed by the Judicial Magistrate, Nainital in Criminal Complaint Case No. 109/2005, *Smt. Bhagirathi Devi v. Ganga Singh & Others*, under Sections 406, 409, 420, 467, 468, 471 IPC, are hereby quashed.

8. Registry is directed to inform the court concerned accordingly.

(Servesesh Kumar Gupta, J.)

30.11.2011
Prabodh