

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

**CRIMINAL MISCELLANEOUS APPLICATION No. 956/2007**

(Under Section 482 of the CrPC)

Ram Chander & Others

.....Applicants

*Versus*

State of Uttarakhand & Another

.....Respondents

Mr. G.C. Lakhchaura, Advocate, for the applicants.

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

None for the private respondent no. 2.

29<sup>th</sup> February, 2012

**Hon'ble Servesh Kumar Gupta, J.**

By way of this Criminal Miscellaneous Application, prayer has been made to quash the cognizance order dated 6.10.2007 as well the entire proceedings of Criminal Case No. 4195/2007, *Smt. Laxmi v. Ram Chander & Others*, pending before the Judicial Magistrate, Kashipur, District Udham Singh Nagar. By the said cognizance order, the applicants have been summoned to stand trial for the offences punishable under Section 452, 323, 504, 506 & 147 IPC.

2. It is pertinent to mention that none has turned up on behalf of private respondent no. 2 Smt. Laxmi despite sufficient service. Hence, this Court rendered hearing to Mr. G.C. Lakhchaura, Advocate, for the applicants and Mr. P.S. Bohara, Brief Holder, for the State. Also perused the materials available on record.

3. It transpires that complainant (respondent no. 2) and the applicants are related to each other. Marriage of one Ms. Kiran, who is niece of applicant no. 1 Mr. Ram Chander as well as maternal niece of respondent no. 2 (complainant) and her husband, exists in the backdrop of the instant controversy. Prior to lodging of the instant complaint, Mr. Ram Chander had instituted a Complaint Case No. 404/2007 against Smt. Laxmi (respondent no. 2), her two sons

Banti & Bhoga as well as two other persons, namely, Mahendrapal and Sukhram alleging that on 8.4.2007 at about 4-5 pm, the aforementioned accused persons came to the house of his brother Mr. Pandey to fetch Ms. Kiran, but she refused to go to her matrimonial home. On this all the accused persons including Smt. Laxmi hurled filthy abuses and began to assault Ram Chander and his brother Mr. Pandey as well as his wife with fists and kicks. On this complaint of Mr. Ram Chander, cognizance was taken against all the five (aforenamed) accused persons and they were summoned vide order dated 25.5.2007 to stand trial for the offences punishable under Section 323, 504, 506 & 147 IPC.

4. It appears that when Smt. Laxmi got notice of the aforesaid cognizance order by way of receiving the summons of the court below, she instituted the impugned Complaint Case No. 4195/2007 on 1.9.2007 against the present applicants as a counterblast to the complaint instituted by Mr. Ram Chander, whereupon she got herself examined under Section 200 CrPC on 5.9.2007 and her witness Prempal was examined under Section 202 CrPC on 15.9.2007. Thereafter the impugned order of cognizance dated 6.10.2007 has been passed by the learned Magistrate.

5. Having considered the facts and circumstances of the case, the Court feels that the learned Magistrate has passed the impugned order of cognizance in a very mundane manner without taking any trouble of going deep into the matter and *prima facie* verify the truthfulness of the averments made in the complaint. The impugned complaint has obviously been lodged as a counterblast to the complaint instituted by Mr. Ram Chander (applicant no. 1), as discussed above. Hence, the impugned order of cognizance passed against the present applicants is total abuse of the process of court and it deserves to be quashed.

6. For the reasons recorded above, the petition has force and it deserves to be allowed. Petition is, accordingly, allowed. Impugned order of cognizance dated 6.10.2007 as well as the entire proceedings of Complaint Case No. 4195/2007, *Smt. Laxmi v. Ram Chander & Others*, pending before the Judicial Magistrate, Kashipur under Section 452, 323, 504, 506 & 147 IPC, are hereby quashed.

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

**(Servesch Kumar Gupta, J.)**

**29.2.2012**

Prabodh