

RESERVED**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL****Criminal Misc. Application No. 640 of 2014**

Sahenavaz and others

.....Applicants

Vs.

State of Uttarakhand and another

.....Respondents

Present:

Mr. Rajendra Singh Azad, learned Advocate for the applicants.

Mr. J.S. Virk, learned AGA assisted by Mr. Kuldeep Singh Rawal, learned Brief Holder for respondents.

Reserved on :- 21.06.2019

Delivered on :- 31.07.2019

Hon'ble Alok Kumar Verma, J.

This application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code"), has been filed on 25.06.2014 by the applicants to quash the charge-sheet No.14 of 2014, submitted by the Investigating Officer under Section 3/5/11 of the Uttarakhand Protection of Cow Progeny Act, 2007 (hereinafter referred to as "the Act, 2007"), in Case Crime No.23 of 2014 of Police Station Bhagwanpur, District Haridwar and to set-aside the impugned order of cognizance dated 03.04.2014, passed by the learned Judicial Magistrate, Roorkee, District Haridwar in Criminal Case No. 178 of 2014, State Vs. Akram and others under Section 3/5/11 of the Act, 2007. The

applicants prayed alternatively to direct the learned trial court to release the applicants by disposing their bail applications same day on their surrender in the Court.

2. The brief facts of the case are that an FIR was lodged by the Sub-Inspector Kaidar Singh, respondent No.2, against the applicants and six others, including five arrested co-accused persons, on 28.01.2014 at about 14:50 p.m. with the allegation that on 28.01.2014 at about 10 a.m. on the telephonic information of police informant, the police party went to village Khelpur, where police informant met them. The police party had tried to collect independent public witnesses but they refused for the same. The police informant pointed out the Gher of Jamil, where slaughtering of cow progeny animals was doing. The police party had seen inside the Gher that five cow progeny animals were there and the persons were talking themselves by touching those animals that they will get more beef by slaughtering those animals. Believing that the persons were doing slaughtering of cow progeny animals, the police party immediately raided inside the Gher, where they had seen and found that 13 persons were cutting and cleaning the beef on two sights with axe and knives and on the other place/side six animals were lying on the floor with clutches by ropes. Seeing the police 08 persons have succeeded to run away from the spot even after chasing by the police. Five persons had been arrested by police at 11:45 a.m. and also recovered some articles of cutting and weighing and five alive animals with beef about 150 Kg. The arrested co-accused persons had named the applicants and one Tahesin, who fled away from the spot. The police party had prepared arrest and

recovery memo on the spot, on which basis the FIR had been lodged against the applicants and 06 others.

3. After completion of investigation, the Investigating Officer filed charge-sheet against the applicants and 05 others. Learned Judicial Magistrate, Roorkee, District Haridwar had taken cognizance on 03.04.2014 in the offences under Sections 3/5/11 of the Act, 2007. On 19.08.2014, the learned trial court passed the order to issue bailable warrant against the applicants. In this application, this Court passed the order on 29.08.2014 that the bailable warrant issued against the applicants shall be kept in abeyance. This interim order has been extended from time to time. The applicants filed earlier a Writ Petition (Criminal) No. 116 of 2014, challenging the FIR of this matter. In the said Writ Petition (Criminal) No.116 of 2014, the order was passed on 07.02.2014 that no coercive steps shall be taken against the applicants during the course of interrogation and investigation, provided they cooperate with the Investigating Agency.

4. Mr. Rajendra Singh Azad, Advocate appearing for the applicants contended that no offence is disclosed against the applicants; the statements of the witnesses are based on the hearsay evidence as told by the arrested co-accused persons to the police; no attempt was made to conduct the identification parade during investigation by the Investigating Officer; except the statements of the co-accused persons to the Police, there is not a single piece of evidence against the applicants to constitute the offences under Sections 3/5/11 of the Act, 2007 and nothing has

been recovered from the applicants. In the support of his contentions, the learned counsel for applicants relied upon the Judgment of Hon'ble Apex Court dated 24.04.2019 passed in Criminal Appeal No. 714 of 2019 [SLP (Criminal) No. 5415 of 2017] **Dipakbhai Jagdishchandra Patel Vs. State of Gujarat and another.**

5. Per contra, learned counsel appearing for the respondents urged that the FIR discloses *prima facie* cognizable offences against the applicants named therein and all the witnesses saw the applicants and co-accused persons on the spot in broad day light. Therefore, there is no justification much less legal justification to quash the charge-sheet and set aside the cognizance order as prayed by the applicants.

6. I have considered the submissions of the learned counsel for the parties.

7. The Act, 2007 is enacted for the protection of cow and its progeny. Section 2(a) of the Act, 2007 defines "Beef" means flesh of cow progeny. Section 2(b) of the Act, 2007 defines "Cow Progeny" means a cow, bull, bullock, heifer or calf and Section 2(d) defines "Slaughter" means killing by any method, whatsoever, including causing such physical blow and incapacitating or poisoning, which would normally cause death.

8. In the light of the submissions of the learned counsels for both the parties, it is necessary to refer the provisions of Sections 3, 5, 11 of the Act, 2007. I reproduce the said provisions as under:

Section 3. Prohibition of Cow Slaughter:

Notwithstanding anything contained in any other law for the time being in force, convention or custom to the contrary, no person shall slaughter or cause to be slaughtered or offer or cause to be offered for slaughter-

- (a) a cow, or
- (b) a cow progeny.

Section 5. Prohibition on sale or keeping in possession of beef :- Notwithstanding anything contained in any other law for the time being in force, no person shall keep in possession or cause to keep in possession or sell or transport or offer for sale or transport or cause to be sold or transported, beef or beef products in any form.

Section 11. Penalty: (1) Whoever contravenes or attempts to contravene or abets the contravention the provisions of Section 3 or Section 5, shall be guilty of an offence punishable with rigorous imprisonment for a term which may be extended up to 10 years but not less than three years and with fine which may be extended upto 10,000/- rupees but not less than 5,000/- rupees.

(2) Whoever contravenes the provisions of sub-section (1) of Section 6, shall be guilty of an offence under this Act punishable with any type of imprisonment for a term which may extend up to 3 years and with fine of Rs. 200/- per cow fine which may extend up to Rs. 2,500/- per cow progeny.

(3) Whoever contravenes or attempts to contravene the provisions of Section 7 and 8, shall be guilty of an offence punishable with simple imprisonment for a minimum term of one week which may extend to one month or with fine which may be up to Rs.1,000/-.

9. The Section 482 of the Code envisages three circumstances in which the inherent jurisdiction may be exercised, namely, “to give effect to an order under the Code, or, to prevent abuse of the process of any Court, or, to secure the ends of justice.” The Section 482 of the Code reads as follows:

“Saving of inherent powers of High Court:- nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

10. This inherent jurisdiction though wide should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, *ex debito justitiae* to do real and substantial justice. While exercising jurisdiction under this section, the Court does not function as a Court of Appeal or Revision. Therefore, quashing of charge-sheet or setting aside the cognizance order on the appreciation of evidences is not justified.

11. In **Dipakbhai Jagdishchandra Patel Vs. State of Gujarat and another (Supra)**, the appeal was filed

against the judgment of the Hon'ble High Court of Gujarat at Ahmedabad dismissing the Special Criminal Application No. 1230 of 2009, filed by the appellant under Section 482 of the Code. The said application was filed by the appellant challenging the complaint and the order passed by the Sessions Court rejecting the request of the appellant to discharge him of the offences under Sections 489B and Section 489C of the Indian Penal Code, 1860. In that matter, the appellant was arrested on 11.04.1996. According to the prosecution, the appellant made confession to the police officer on the same day. The Hon'ble Apex Court has held that a confession made to a Police Officer is inadmissible. The Hon'ble Apex Court has observed that if the statement made by the appellant on 11.04.1996 is inadmissible, then, there will only be the statement of the co-accused available to be considered. The Hon'ble Apex Court referred to the judgment in **Haricharan Kurmi Vs. State of Bihar : AIR 1964 SC 1184**, in which, the Hon'ble Apex Court has held, "*As a result of the provisions contained in S.30, Evidence Act, the confession of a co-accused has to be regarded as amounting to evidence in a general way, because whatever is considered by the Court is evidence; circumstances which are considered by the Court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of S.30, the fact remains that it is not evidence as defined by S.3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the Court cannot start with the confession of a co-accused person : it must begin with other evidence*

adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence....” In the facts and circumstances of the matter of that appeal, the Hon’ble Apex Court found that there was no recovery from the residence of the appellant of the counterfeit notes and that there was no other material on the basis of which even a strong suspicion could be aroused, therefore, the appeal was allowed.

12. In **State of West Bengal and others Vs. Swapan Kumar Guha and others, AIR 1982 SC 949**, the Hon’ble Apex Court has held, “whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case ---.”

13. In **Madhu Limaya Vs. the State of Maharashtra, 1978 AIR 47**, the Hon’ble Apex Court has held that the following principles would govern the exercise of inherent jurisdiction of the High Court –

(1) Power is not to be resorted to, if there is specific provision in Code for redress of grievances of aggrieved party.

(2) It should be exercised sparingly to prevent abuse of process of any Court or otherwise to secure ends of justice.

(3) It should not be exercised against the express bar of the law engrafted in any other provision of the Code.

14. In the landmark case **State of Haryana v. Bhajan Lal (1992) Supp.(1) SCC 335**, the Hon'ble Supreme Court of India considered in detail the provisions of Section 482 of the Code. The Hon'ble Supreme Court summarized the legal position by laying the following guidelines to be followed by High Courts in exercise of their inherent jurisdiction:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

15. In the instant matter, the arrested co-accused persons had named the applicants, who ran away from the scene, but it is also a important fact in this case that all the witnesses stated in their statements, recorded under Section 161 of the Code, that they saw the applicants who ran away from the spot. Therefore, witnesses had an opportunity of seeing the applicants in broad day light i.e. 11:45 a.m., when they would be able to note the features of the applicants.

16. Want of the Test Identification Parade does not affect the admissibility of the evidence of identification in

Court. In **Jadunath Singh Vs. State of U.P., AIR 1971 SC 363**, the Hon'ble Apex Court has held that absence of test identification is not necessarily fatal. In **Kanta Prasad Vs. Delhi Administration, 1958 SCR 1218**, the Hon'ble Apex Court has held that it would no doubt have been prudent to hold that a Test Identification Parade with respect to witnesses, who did not know the accused before the occurrence, but failure to hold such a parade would not take inadmissible the evidence of identification in Court. In **Raju Manjhi Vs. State of Bihar, 2018(3) CCSC 1470**, the Hon'ble Apex Court has held that the identification parade belongs to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim, a Test Identification Parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a Test Identification Parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification should be a matter for the Courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration.

17. In the instant matter, all the witnesses saw the applicants in the broad day light at the spot. The case has to be tried and these evidences will be adduced before the trial court. This Court cannot hold a parallel trial in an application under Section 482 of the Code.

18. Therefore, in the light of the facts and circumstances of the present case, the present case does

not fall in any category set out in the judgment of **State of Haryana and others Vs. Bhajan Lal and others (Supra)**. Accordingly, the prayers for quashing the charge-sheet and setting aside the cognizance order are refused. However, considering the facts and circumstances of the case, it is provided that if the applicants appear and surrender before the court below within 15 days from today and apply for bail, their prayer for bail shall be considered and decided in view of the law laid down by the Hon'ble Apex Court in the case of **Lal Kamendra Pratap Singh Vs. State of U.P., 2009(3) ADJ 322**. For a period of 15 days from today or till the applicants surrender, whichever earlier, no coercive action shall be taken against the applicants. However, in case, the applicants do not appear before the court below within the aforesaid period, coercive action shall be taken against them.

19. Since, the case has to be tried, I make it clear that the observations made earlier are only for the disposal of this application, filed under Section 482 of the Code. These observations will not influence the trial court while deciding the case.

20. With the aforesaid directions, the application, filed under Section 482 of the Code, is dismissed.

(Alok Kumar Verma, J.)
31.07.2019