



2024:UHC:9846

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc Application No. 999 of 2024

23 December, 2024

Kripal Singh & others

--Applicants

Versus

State Of Uttarakhand & another

--Respondents

Presence:-

Mr. T.A. Khan, learned Senior Advocate assisted by Mr. Mohd. Shafy, learned counsel for the applicants.

Mr. B.C. Joshi, learned AGA along with Ms. Sweta Badola Dobhal, learned Brief Holder for the State.

Hon'ble Pankaj Purohit, J.

The present application filed under Section 528 of the BNSS Act, 2023 is directed against the order dated 30.09.2023, passed by the court of Judicial Magistrate, Kashpur, District Udham Singh Nagar, whereby the said court has proceeded to frame charge as against the applicants under Sections 323, 380, 427, 504 & 506 IPC, after rejecting the application for discharge; as well as the judgment and order dated 29.11.2024, passed by 1st Additional Sessions Judge, Kashipur, District Udham Singh Nagar in Criminal Revision No.127 of 2023, whereby the revision has been dismissed, affirming the order passed by learned Judicial Magistrate.

2. Facts, in nutshell, are that it was stated by the respondent no.2-complainant in his complaint that he runs a dairy shop in Kashipur. The owners of the shop



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are the applicants. They exert pressure on the complainant to vacate the shop, even his electrical connection was also cut regarding which he filed a suit in the civil court which is pending. On 14.05.2021 at about 5:30 a.m., accused persons/applicants forcibly entered into the shop of complainant and thrown away the articles kept therein and also caused him financial loss. The accused persons/applicants also abused the complainant and threatened him to leave the shop, else he would be killed. After filing of the aforesaid complaint, statements of witnesses under Sections 200 & 202 Cr.P.C. were recorded before the concerned court. The accused persons moved an application seeking discharge which was also rejected. The applicants, thereafter, moved an application under Section 245 Cr.P.C. seeking their discharge. The said application was decided by the trial court by judgment dated 30.09.2023, whereby the said application was rejected and the court below proceeded to frame charge against the accused. The applicant, thereafter, preferred a revision, which too, met with the fate of dismissal by the revisional court vide the judgment and order dated 29.11.2024. Challenging both the judgments, present C528 application has been filed.

3. Before the trial court as many as three witnesses were examined by the complainant in support of his case. The trial court also considered the arguments raised by the defence that the same may be relevant for the purpose of evidence and deciding the case on merits, but on the basis thereof, passing the order for their discharge does not appear to be justified. Relying upon the authority of **State of Orissa vs. Debendra Nath Padhi; AIR 2005 SC 359**, wherein the Hon'ble Apex Court has held as under:-



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“No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial. The material as produced by the prosecution alone is to be considered and not the one produced by the accused. The decisions proceed on the basis of settled legal position that the material as produced by the prosecution alone is to be considered and not the one produced by the accused. The latter aspect relating to the accused though has not been specifically stated, yet it is implicit in the decisions.”

4. It is a trite law that on the stage of framing of charge, the trial court is not supposed to examine in detail the material brought on record by the prosecution, nor it is required to come to the conclusion that from the material on record, the charge leveled against the applicants is finally proved or not. There are concurrent judgments passed by the court below against the applicants.

5. Learned Senior Advocate appearing for the applicants could not point out any material illegality or irregularity in the impugned judgments passed by the courts below.

6. As a result, the present C528 application is devoid of any merit and the same is dismissed.

7. The applicants are directed to appear before the trial court for framing of charge as they have been directed by the trial court.

8. Pending application, if any, stands disposed of accordingly.

(Pankaj Purohit, J.)
23.12.2024

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