



IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

Criminal Misc. Application No.847 of 2018

Daleep Singh

.... Applicant

Versus

State of Uttarakhand and another Respondents

Present:-

Mr. Kailash Chandra Tewari, learned counsel for the applicant.

Mr. Rakesh Joshi, learned AGA for the State.

Mr. Sandeep Adhikari, learned counsel for respondent no.2.

Hon'ble Siddhartha Sah, J. (Oral)

By means of the present criminal miscellaneous application under Section 482 of the Code of Criminal Procedure, the applicant has sought quashing of the proceedings of Criminal Case No. 33 of 2016, *Pushkar Singh vs. Daleep Singh*, under Sections 323, 354, and 506 Cr.P.C., pending before the Court of the Judicial Magistrate, Dwarahat, District Almora, as well as the summoning order dated 27/3/2018 passed in the said case by the Court of the Judicial Magistrate, Dwarahat, District Almora.



2. It is the case of the applicant that both the complainant and the opposite party No. 2 are residents of the same village, Sungari, Patwari Circle Dhanshyari, District Almora. A dispute regarding the demarcation of the land (courtyard) was going on between the parties, and the complainant claimed ownership over the disputed land. However, later, in the presence of the Supervisor Kanoongo, the parties settled the said dispute, but the complainant and his family members could not keep themselves from holding a grudge against the accused.

3. It is the case of the applicant that the complainant/respondent No. 2 assaulted the applicant and wrongfully confined him in his residence. In this regard, the applicant lodged an FIR against the complainant/respondent No. 2. As a counterblast to the case filed by the applicant, the complainant tried to make a false complaint against the applicant, Daleep Singh, for which he filed a complaint before the SDM, Chaukhutia/Bhikiyasain, on 11/7/2014. On the said complaint, the SDM, Bhikiyasain, directed the Revenue Inspector, Chaukhutia, to inquire into the matter.

4. In compliance with the order of the SDM, Bhikiyasain, the Revenue Sub-Inspector, Dhanshyari,



submitted his report on 15th July 2014 to the aforesaid authority, stating therein that the complaint was nothing but a mere endeavour to save himself from the offences committed by him against the applicant. Thereafter, on 19/7/2014, the complainant/respondent No. 2 filed a complaint under Section 156(3) of the Cr.P.C. before the Judicial Magistrate, Dwarahat, District Almora, repeating the same averments as made in the previous complaint filed before the SDM, Chaukhutia/Bhikiyasain, with a prayer to direct the Patwari, Dhanshyari, to register a criminal case and conduct an investigation. On this, the Judicial Magistrate directed the office to register it as a Miscellaneous Case and issued a direction to file the report by 28/8/2014.

5. In compliance of the order of the Judicial Magistrate, Dwarahat, the Revenue Sub-Inspector, Dhanshyari, submitted a detailed report on 28/8/2014 before the Court of the Judicial Magistrate, Dwarahat, District Almora. On the said complaint, the Judicial Magistrate, Dwarahat, took cognizance against the applicant, Daleep Singh, in Criminal Case No. 1 of 2014, under Sections 354, 504, and 506 of the IPC on 22/11/2014 and issued summons under Section 61 of the Cr.P.C. against the applicant, directing his



appearance before the Court on 24/4/2015. Against the said order, Criminal Misc. Application No. 475 of 2015, filed under Section 482, was pending before this Court, but the aforesaid application became infructuous as Criminal Case No. 1 of 2014, *Pushkar Singh vs. Daleep Singh*, under Sections 354, 504, and 506 IPC, was dismissed for non-prosecution. This fact has been categorically mentioned by the complainant in his complaint dated 30th March 2016.

6. It is further the case of the applicant that, instead of filing an appeal/revision against the dismissal order, the complainant again filed a complaint against the applicant, Daleep Singh, by repeating the same allegations as mentioned in the earlier complaint before the Judicial Magistrate, Dwarahat, District Almora, on 30th March 2016, stating therein that a complaint regarding the same incident had already been filed before the Court of the Judicial Magistrate, Dwarahat, District Almora but was dismissed for non-prosecution. The Judicial Magistrate entertained the said complaint of the complainant but dismissed it under Section 203 of the Cr.P.C. vide order dated 17/11/2016.

7. Feeling aggrieved by the order dated 17/11/2016, the complainant filed a criminal revision



before the Sessions Judge, Almora, and the Additional Sessions Judge, Almora, vide order dated 2nd May 2017, allowed Criminal Revision No. 3 of 2017, set aside the order of the learned Judicial Magistrate, Dwarahat, dated 17/11/2016 passed in Criminal Case No. 33 of 2016, *Pushkar Singh vs. Daleep Singh*, and directed the concerned Magistrate to re-enquire into the matter and pass appropriate orders in accordance with Sections 200 and 202 of the Cr.P.C. Pursuant to the order dated 2nd May 2017 passed by the Additional Sessions Judge, Almora, the learned Judicial Magistrate, Dwarahat, District Almora, again heard the matter on the same grounds and evidence, took cognizance against the applicant in Criminal Case No. 33 of 2016, *Pushkar Singh vs. Daleep Singh*, under Sections 323, 354, and 506 of the IPC, and issued the summoning order dated 27/3/2018.

8. Assailing the aforesaid summoning order dated 27/3/2018 and the entire proceedings of Criminal Case No. 33 of 2016 pending before the Court of the Judicial Magistrate, Dwarahat, District Almora, the learned counsel for the applicant submitted that both the courts below entertained the second complaint despite being aware of the fact that the earlier complaint, which had



been filed on the same grounds, had already been dismissed for non-prosecution, whereas the second complaint could not have been entertained on the same grounds arising out of the same incident.

9. Learned counsel for the applicant, while referring to the rejoinder affidavit, submitted that the averment in the complaint that the earlier complaint was dismissed for non-prosecution was, in fact, incorrect. Referring to Annexure No. RA-1 of the rejoinder affidavit filed on behalf of the applicant, learned counsel submitted that the averment regarding the dismissal of the complaint for non-prosecution is absolutely false. In fact, the complainant/respondent No. 2 had not pressed his earlier complaint bearing Miscellaneous Criminal Case No. 120 of 2014, *Pushkar Singh vs. Daleep Singh*.

10. Perusal of the said order dated 29/4/2015 would show that the complainant had made a file note on the order sheet of the said case stating that he did not want any further proceedings in the case, and on the basis of the said endorsement made on the order sheet, the Judicial Magistrate, Dwarahat, District Almora, closed the proceedings of the said case.



11. Referring to Section 257 of the Cr.P.C., learned counsel for the applicant submitted that since the effect of the withdrawal of the complaint by the complainant/respondent No. 2 would be that of acquittal, once the complaint was dismissed as not pressed/withdrawn, the applicant stood acquitted. On the same set of allegations for the same offences, the applicant cannot be vexed twice. He has placed reliance upon Section 300 of the Cr.P.C., which provides that a person once convicted or acquitted cannot be tried for the same offence. He submitted that the said section enacts the well-known principle of criminal jurisprudence that no person shall be put in jeopardy twice for the same offence. The case of the applicant is also covered by the principle of double jeopardy, as enshrined in both Article 20(2) of the Constitution of India and Section 300 of the Cr.P.C.

12. Learned counsel for the applicant submitted that both the trial court as well as the revisional court erred in overlooking this important and cardinal principle of law. The passing of the impugned order would result in double jeopardy, and the impugned orders are illegal and not sustainable in the eyes of law.



13. Before proceeding further, it is also relevant to mention that the Rajaswa Up-Nirikshak of Dhanshyari, vide report dated 15th July 2014 addressed to the Up-Zila Adhikari, Chaukhutia, District Almora, submitted a report stating that on 7/7/2014, Daleep Singh, son of Ganga Singh, could not be found despite being searched for by his family members. Thereafter, on the night of 7/7/2014, the applicant's father, Ganga Singh, contacted him over the phone and informed him that Pushkar Singh and others had committed *marpeet* with his son and that he did not know where they had taken him. On receiving this information, he, along with PRD personnel, reached Village Sungari on 8/7/2014 and recovered the applicant, Daleep Singh, from the room adjacent to the shop of Pushkar Singh. Looking at his condition, he was taken to the Community Health Center, Chaukhutia, where he was provided treatment.

14. Thereafter, the applicant, Daleep Singh, submitted a written report, which was registered as Criminal Case No. 1 of 2014 under Sections 323, 504, 506, and 342 of the IPC against the accused persons, namely, Pushkar Singh, Shishupal Singh, and Kripal Singh, and an investigation was conducted. It is further stated in the report dated 15/7/2014 that the accused,



Pushkar Singh, with the intention of saving himself, submitted a false report against the applicant, Daleep Singh.

15. In the aforesaid background, and also since the earlier complaint submitted by respondent No. 2 had not been pressed and would have the effect of acquittal of the accused, it would be apt to refer to the judgment of the Hon'ble Supreme Court in *State of Haryana vs. Bhajan Lal*, reported in 1992 Supp (1) SCC 335, wherein, in paragraph 102, Illustration 7, the Hon'ble Supreme Court has categorically held that in cases of malicious complaints to seek vengeance, the High Court can exercise its powers under Section 482 of the Cr.P.C. to secure the ends of justice.

16 In the peculiar facts and circumstances of the case, it is borne out from the record, particularly from the report of the Rajaswa Up-Nirikshak, Dhanshyari, dated 15th July 2014, that the applicant, Daleep Singh, had already lodged an FIR against respondent No. 2/complainant and others on account of *marpeet* committed by respondent No. 2 and others on 7/7/2014. Hence, it is very clear that the complaint itself was filed as a counterblast. Therefore, the case of the applicant is



also covered by the judgment of the Hon'ble Supreme Court in *State of Haryana vs. Bhajan Lal* (supra).

17. Learned counsel for respondent No. 2 submitted that the submissions made by the learned counsel for the applicant are misconceived. An offence is made out against the applicant; hence, the Criminal Misc. Application under Section 482 Cr.P.C. is liable to be dismissed.

18. Heard learned counsel for the parties at length, and after having gone through the record, it is evident that the complaint appears to have been filed by the complainant/respondent No. 2 as a counterblast. Hence, the case is covered by the judgment of the Hon'ble Supreme Court in *State of Haryana vs. Bhajan Lal* (supra). Further, after not pressing/withdrawing the earlier complaint, which had the effect of acquittal under the provisions of Section 257 Cr.P.C., no fresh complaint on the same set of facts could have been filed. It would have the effect of acquittal of the applicant.

19. Hence, in the facts and circumstances of the case, the Criminal Misc. Application under Section 482 Cr.P.C. deserves to be allowed. Consequently, the proceedings of Criminal Case No. 33 of 2016, *Pushkar*



2026:UHC:6641

Singh vs. Daleep Singh, under Sections 323, 354, and 506 IPC, pending before the Court of the Judicial Magistrate, Dwarahat, District Almora, as well as the summoning order dated 27/3/2018 passed therein by the Court of the Judicial Magistrate, Dwarahat, District Almora, are hereby quashed.

20. The Criminal Misc. Application is accordingly allowed.

(Siddhartha Sah, J.)
30.07.2026

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