
(2018) 12 UK CK 0064

In the Uttarakhand High Court

Case No : Writ Petition (Criminal) No. 2279 Of 2018

Abdul Hakim And Others

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 15-12-2018

Acts Referred:

Indian Penal Code, 1860 — Section 323, 354, 504, 506
Constitution Of India, 1950 — Article 226

Citation : (2018) 12 UK CK 0064

Hon'ble Judges : Ravindra Maithani, J

Bench : Single Bench

Advocate : Rajendra Arya, Manisha Rana Sing, Balvinder Singh

Final Decision : Disposed Off

Judgement

Ravindra Maithani, J

1. Present writ petition has been filed by the petitioners seeking the following relief(s):-

(i) A writ, order or direction in the nature of certiorari quashing the impugned FIR No. 0307 dated 17.11.2018 Police Station, Ramnagar, Nainital District Nainital Under Section 323, 354, 504, 506 IPC, lodged by the Respondent no.3 and also be pleased to stay the arrest of the Petitioner during the pendency of this writ petition in this Hon'ble High Court, failing which the petitioners will suffer irreparable loss and injury. (Contained as Annexure No.3 to the criminal writ petition)."

2. The F.I.R. in question has been lodged by Ms. Rukhsar with the allegation that on 17.11.2018, the first informant alongwith her mother and sister-in-law went to the village of the petitioners. There, all the petitioners started marpeet with her and petitioner no.3 also molested her. They all threatened to kill the first informant and her accompanying relatives.

3. It is urged by the learned counsel for the petitioners that the allegations in the F.I.R. are without any basis. F.I.R. may not be quashed merely on the basis of statement given by the persons, who are named as an accused in the case.

4. A bare perusal of the First Information Report in the instant case discloses commission of cognizable offence. Whether the allegations, as stated in the first information report, are true or not, is a matter of investigation, which is still pending. Hence, at this stage, there is no ground, as such, for quashing the first information report. The petition, to that extent, deserves to be dismissed.

5. Petitioners have also prayed for stay of the arrest in pursuance of the first information report. In a petition under Article 226 of the Constitution, arrest of a person involved in any case, which is pending investigation, may not be stayed as a routine.

6. Learned counsel for the petitioners would argue that Investigating Officer may arrest the petitioners without following the guidelines, laid down in the case of *Arnesh Kumar Vs. State of Bihar and another*, (2014) 8 SCC 273 and in that eventuality, the loss which might be caused to the petitioner would be irreparable. It is argued that either the arrest of the petitioners may be stayed or in any case, the Police may be directed not to arrest petitioners without following the guidelines laid down in the case of *Arnesh Kumar* (supra).

7. In the case of *Arnesh Kumar* (supra), while interpreting and making reference to the various provisions of the Code of Criminal Procedure, 1973, pertaining to arrest and production of the accused before the Magistrate, the Hon'ble Court observed as under:-

"11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically....."

8. Thereafter, from paragraph no. 11.2 to 11.8, Hon'ble Court, in the case of *Arnesh Kumar* (supra) issued directions to the Police Officers authorized to make arrest as well as to the Magistrate authorized to order of detention of the accused.

9. Needless to say, Investigating Officer shall abide by the directions issued in the case of *Arnesh Kumar* (supra) before effecting arrest of the petitioners. The Senior Superintendent of Police, District - Nainital shall ensure it.

10. Accordingly, with above observations, the writ petition stands disposed of.

11. Stay application (CLMA No.19409/18) also stands disposed of.