

(2011) 08 UK CK 0042

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 525 of 2007

Anand Singh Dobhal

APPELLANT

Vs

State of Uttarakhand and Another

RESPONDENT

Date of Decision : 10-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468
Penal Code, 1860 (IPC) — Section 120B, 171F, 176
Representation of the People Act, 1951 — Section 136

Citation : (2011) 08 UK CK 0042

Hon'ble Judges : Servesch Kumar Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Servesch Kumar Gupta, J.—By way of this Criminal Misc. application, the order of Cognizance dated 08.08.1997 passed by Judicial Magistrate Ist Class, Did I hat District Pithoragarh in Misc. Criminal case No. 26/1995 Naveen Chandra v. Hridayesh Kumar, is under challenge.

2. This Court has given hearing to the learned Counsel for the applicant and learned Brief holder for the State/Respondent while none is responding on behalf of Respondent No. 2 despite of personally service upon him.

3. It appears that in October,1992, the election of one Member for the Teachers Constituency in Legislative Council of U.P. from the area of Kumaon-Garhwal had to be conducted. In that election, one Smt. Indira Hridayesh was a candidate. The canvassing in her favour was being done by her husband Sri Hridayesh. Some illegality/irregularity, covered within the definition of offence punishable u/s 136 of the Representation of People Act, 1951, besides for the offence punishable u/s 171(F)/120-B of IPC, allegedly was committed. The First Information Report was lodged on 10.10.1992. The matter was investigated by police, which ended with submission of Final report on 24.04.1993. Against the submission of final report, a protest petition was filed by one Sri Naveen Chandra

who is private Respondent in this petition, whereupon Misc. case No. 26 of 1995 was registered. The matter was heard by Judicial Magistrate, Did I hat and after hearing the both parties, impugned order of cognizance was passed.

4. This order of cognizance was challenged by the co-accused Sri Hridiyesh Kumar by filing Criminal Misc. application No. 643 of 2005 in this Court and after hearing both the parties, learned Single Judge of this Court was of the view that the impugned cognizance order is barred by time limitation as prescribed u/s 468 Code of Criminal Procedure

5. In this Criminal Misc. application co-accused Anand Singh Dobhal had challenged the same order of cognizance dated 08.08.1997 which has already been quashed by this Court on the Criminal Misc. application moved by Sri Hridiyesh Kumar.

6. At the cost of repetition, it may be mentioned that the offence u/s 136 of the Representation of People Act, 1951 is punishable for the maximum period of six months or fine or with both, if the same is alleged to have been committed by any other person than the electoral staff. Present Petitioner was not electoral staff but the postman, whose task was to convey the ballot papers besides other election process materials. The offence u/s 176 IPC read with 120-B IPC invites the maximum punishment of one year or with fine or both, while u/s 468 Code of Criminal Procedure prescribed maximum period for taking cognizance is one year from the date of offence or from the date of knowledge, for all the offences where for maximum term does not exceed one year. This way, cognizance could have been taken by the court till 10th October, 1993, while the cognizance order was passed on 08.08.1997. On this ground, the Court has already allowed the petition of co-accused Hridiyesh Kumar and quashed the cognizance order against him.

7. Similarly, the order of cognizance against Anand Singh Dobhal is likely to be quashed on this ground. The petition is allowed. The order of cognizance dated 08.08.1997 passed against Anand Singh Dhobal is hereby quashed.