
(2019) 10 UK CK 0105

In the Uttarakhand High Court

Case No : Criminal Writ Petition (WPCRL No. 1872 Of 2019)

Bhuvan Chandra Dangwal And Others

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 31-10-2019

Acts Referred:

Uttar Pradesh Excise Act, 1910 — Section 60, 72
Constitution Of India, 1950 — Article 226

Citation : (2019) 10 UK CK 0105

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Division Bench

Advocate : Sandeep Kothari, Pratiroop Pande

Final Decision : Dismissed

Judgement

Sharad Kumar Sharma, J

1. The petitioners have filed the present writ petition for the following reliefs:-

"a) Issue a writ, order or direction in the nature Certiorari to call for the record and to quash the impugned first information report dated 30.09.2019 registered as Case Crime (FIR) No. 20/2019, under section 60/72 of the Excise Act, at Police Station - Askot, District - Pithoragarh qua the petitioners by the respondent no. 3, filed as Annexure No.1

b) Issue a writ, order or direction in the nature of Mandamus directing the respondent nos. 1 and 2 not to arrest or harass the petitioners in pursuance of the aforesaid first information report dated 30.09.2019 during the pendency of the investigation.

c) Issue any suitable writ, order or direction which this Hon'ble Court may deem fit and proper under the facts circumstances of the case may kindly be passed.

d) Award the cost of the petition in favour of the petitioners."

2. The learned counsel for the petitioners submits that the petitioners have been falsely implicated in the aforesaid Case Crime No. 20/2019, for the commission of offences under Section 60/72 of the Excise Act, which was registered at Police Station Askot, District Pithoragarh. He submits that the alleged involvement of the petitioners in the aforesaid offence, as it has been reflected in the FIR, their involvement in the offence is untenable for the reason that there happen to be wider departmental rift between the excise department and police department and they have been falsely implicated on account of departmental malice. The said plea, which has been raised during the course of argument is not the ground of defence in the writ petition. They have submitted that since they being the Excise Officers of the department, there is a remotest possibility of there being indulged in illegal transportation of the liquor which was found to be carried in the two vehicles bearing registration Nos. UK05-CA-1213 and UK04-CB-1394, which were apprehended by the police while transporting the illegal liquor.

3. The learned AGA, while opposing the writ petition for the grant of interim protection from their stay of arrest of the petitioners for the aforesaid offence, has submitted that as per the instructions which he has received from Kotwali Askot, District Pithoragarh, the information which has been imparted to him is that the petitioners, despite of being Excise Officers, in fact, had contacted the owner of the vehicle to book for the purposes to be utilized for the transportation of the aforesaid liquor which was later on apprehended by the police. The aforesaid act of engaging the vehicle by the writ petitions for transporting the illegal liquor at the behest of the Excise Officers is uncalled for because it would apparently involve indulging in the commission of crime, and particularly when as per the report, their indulgment in engaging the vehicle for transportation of the illegal liquor was also supported by the CCTV footage, which has been referred in the report submitted by the SHO, Kotwali, Askot, District Pithoragarh.

4. In view of the aforesaid argument as extended by the learned AGA and also in view of the apparent indulgement of the petitioners in getting the vehicles engaged for the purposes of the illegal transportation of the illicit liquor, this Court is not inclined to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India for quashing of the FIR, which apparently discloses the commission of offence under the Excise Act. Consequently, the writ petition lacks merit and the same is accordingly dismissed without prejudicing the rights of the petitioners to seek an appropriate bail after surrender before the Court concerned.

5. Ultimately, after rendering the judgement, the learned counsel for the petitioners submits that his argument in relation to Arnesh Kumar be considered, he submits that any subsequent action which has been followed, it ought be done in consonance to the judgement of Arnesh Kumar, but, when the learned counsel on being called upon to place the said judgement and the paras of the judgement, which he wants to place reliance in support of his argument, he has been unable to place the said judgement before this Court in order to deal with

the said argument. Consequently, at this stage, without the judgement being placed before this Court is not in a position to deal with the argument as extended by the learned counsel for the petitioners and its impact on the case of the prosecution.

6. Thus, the writ petition lacks merits and the same is dismissed accordingly.