

(2016) 01 UK CK 0001

In the Uttarakhand High Court

Case No : Criminal Writ Petition No. 08 of 2016

Dinesh Gangopadhyay

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, Section 41
Penal Code, 1860 (IPC) — Section 120-B, Section 420, Section 467, Section 468,
Section 471, Section 504, Section 506

Citation : (2016) 01 UK CK 0001

Hon'ble Judges : Umesh Chandra Dhyani, J.

Bench : Single Bench

Advocate : Karan Anand, Advocate, for the Appellant; Pramod Tiwari, Brief Holder, for the Respondent

Final Decision : Disposed off

Judgement

Umesh Chandra Dhyani, J.

1. By means of present writ petition, the petitioner seeks to quash the impugned FIR dated 13.11.2015 lodged by the respondent No. 3 being Case Crime No. 328 of 2015, under Section 420, 467, 468, 471, 120-B, 504 and 506 of IPC, PS Patel Nagar, District Dehradun.

2. Learned counsel for the State says that the investigation of the case is under progress and it will take sometime to complete the same.

3. Considering the facts of the case, it will be of no use keeping the present criminal writ petition pending for disposal, inasmuch as, the investigation is going on and ultimately, the investigation will come to its logical conclusion only under Section 173 of the Criminal Procedure Code either by a final report or by a charge-sheet. The same is accordingly being disposed of in view of the judgment rendered by Hon'ble Apex Court in Arnesh Kumar vs. State of Bihar and another, reported in , (2014) 8 Supreme Court Cases 273, wherein it was held as below:

"7.1 From a plain reading of the aforesaid provision, it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

7.2 The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest.

7.3 In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or more purposes envisaged by Sub-Clauses (a) to (e) of Clause (1) of Section 41 of Cr.P.C."

4. Needless to say that the Investigating Officer of the case shall abide by the aforesaid directions of Hon"ble Apex Court, before affecting the arrest, if any, of the petitioner.

5. The petitioner shall contact the I.O. of the case on 16th January, 2016 and on such subsequent dates as may be directed by the Investigating Officer.

6. The investigating officer is requested to complete the investigation without unnecessary delay in terms of subsection (1) of Section 173 Cr.P.C.

7. If the petitioner does not appear before the Investigating Officer on 16.01.2016 as directed, liberty is granted to the respondent No. 3 for recalling of this Order.

8. Criminal Writ Petition is disposed of with the directions as above.