
(2019) 07 UK CK 0018

In the Uttarakhand High Court

Case No : Criminal Writ Petition No. 846 Of 2019

Hawaladar (Retd.) Manthalal And Others

APPELLANT

Vs

State Of Uttarakhand & Another

RESPONDENT

Date of Decision : 01-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 323, 504, 506
Code Of Criminal Procedure, 1973 — Section 156

Citation : (2019) 07 UK CK 0018

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Vivek Shukla, Mamta Joshi, Vikas Bahuguna

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J

1. This matter was heard by a Division Bench of this Court, where one learned Single Judge (Alok Singh, J.) had issued notices to respondent nos. 4 and 5 and the matter was directed to be listed after the service report is received.

2. The other learned Single Judge (Ravindra Maithani, J.) was not in favour of issuance of notice to respondent nos. 4 and 5 as he had come to the conclusion that what is being agitated in the writ petition was primarily a private dispute between the parties relating to their rights over the dwelling house which is situated at Nathanpur, District Dehradun.

3. Since there was a difference of opinion between the two judges, this matter was placed before the Hon'ble Chief Justice and now this matter has come before this Court for third opinion.

4. The case of the petitioners is that petitioner no. 1 is an Ex-serviceman who had constructed a house in Dehradun out of his own earning and he has been ousted from the house by his son and his daughter-in-law who have been made

respondent nos. 4 and 5 respectively in the present writ petition.

5. Respondent nos. 4 and 5 are being represented before this Court by Sri Vikas Bahuguna, Advocate.

6. Petitioner no.1 is presently 75 years of age. Having discharged from the Indian Army from the rank of "Havildar", he settled in Dehradun and has constructed a dwelling house for himself and his family, but his son and his daughter-in-law who are respondent nos. 4 and 5 respectively before this Court are not allowing him to stay in the house and in fact he has been driven out from the house and he is presently residing in Delhi with his other son. There is also an imminent threat to him at the hands of respondent nos.4 and 5.

7. Learned State Counsel Ms. Mamta Joshi, on the other hand, has apprised this Court that as of now there are various litigations going on between the parties, including criminal cases and both the parties have filed various cases against each other which are pending before different courts. Whereas petitioner no. 1 has lodged a first information report against the private respondents under Sections 323/504 and 506 of IPC, respondent no. 5 has filed a case under the Domestic Violence Act against her father-in-law i.e. petitioner no. 1.

8. Learned counsel for respondent nos. 4 and 5 Sri Vikas Bahuguna has also apprised this Court that the case is not as is being presented before this Court inasmuch as the mother of respondent no. 4 i.e. the wife of petitioner no. 1 is residing with the private respondents in the disputed house in Dehradun.

9. On the other hand, the grievance of the petitioners is that pursuant to the action of the private respondents, petitioner no. 1 had tried to approach the police authorities but in vain.

10. The case is regarding the rights of the parties on the dwelling house which is situated at Nathanpur, District Dehradun. This issue lies in the domain of private law. Regarding the alleged criminal act of respondent nos. 4 and 5, the petitioners would always be at liberty to lodge an FIR. However, in case the same is not lodged, petitioners must approach the superior police authorities and if their grievance is not settled there, then they have a remedy to move an application under Section 156(3) of CrPC before the concerned Magistrate as what has been held by the Hon'ble Apex Court in the case of Sakiri Vasu vs. State of Uttar Pradesh and others, reported in (2008) 2 SCC 409, which has been relied upon by a learned Single Judge (Ravindra Maithani, J.) who has dismissed the petition of the petitioners vide order dated 21.06.2019.

11. As regarding the rights of the parties on the dwelling house, this again cannot be looked into in a writ petition. For that the parties would be at liberty to file a civil suit for assertion of their rights. As already stated above, an effective remedy is available to the petitioners in private law.

12. Therefore, in my view, the learned Single Judge (Ravindra Maithani, J.) was right in dismissing the petition of the petitioners as he did not find it a fit case to

be entertained in a writ petition. I agree with the view of Justice Ravindra Maithani. This matter cannot be entertained in a writ petition.