
(2018) 02 UK CK 0010
In the Uttarakhand High Court
Case No : 221 of 2018

Istkar and nine others

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 09-02-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 41](#) - When police may arrest without warrant

Citation : (2018) 02 UK CK 0010

Hon'ble Judges : U.C. Dhyani

Bench : Single Bench

Advocate : Pradeep Chamyal, J.S.Virk, K.S.Rawal, Shivali Joshi

Final Decision : Disposed off

Judgement

1. By means of present writ petition, the petitioners seek the following reliefs, among others:

(a) Issue an order or direction in the nature of certiorari quashing the first information report lodged by respondent no. 3 on 02.02.2018

(annexure-1) as FIR No. 0066 of 2018 punishable under Sections 147,148,332,353,504 and 506 IPC, and under section 2 & 3 of Prevention of

Damage to Public Property Act, 1984 and under Section 7 of Criminal Law (Amendment) Act, 1932, PS Saharpur, District Dehradun.

(b) Issue a writ, order or direction in the nature of mandamus directing the respondents no. 1 & not to arrest the petitioners in pursuance to the

FIR lodged by respondent no. 3 on 02.02.2018 (annexure-1) as FIR No. 0066 of 2018 punishable under Sections 147,148,332,353,504 and

506 IPC, and under section 2 & 3 of Prevention of Damage to Public Property Act, 1984 and under Section 7 of Criminal Law (Amendment)

Act, 1932, PS Saharpur, District Dehradun.

2. Heard learned counsel for the petitioners, learned counsel for the State, perused the documents brought on record and considered the grounds

taken up in the writ petition.

3. Without commenting upon the merits of the case, this Court proposes to pass the following order, in the interest of justice. 5. 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, the

petitioners should be arrested only when the Investigating Officer has reason to believe, on the basis of information and material collected, that they

have committed an offence. Before making arrest, the Investigating Officer is required to satisfy himself 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. It will not be based upon the ipse dixit of the Police Officer.

In other words, the petitioners shall be arrested only when the conditions stipulated in Sub-Clauses (a) to (e) of Clause (1) of Section 41 of

Cr.P.C. are satisfied.

6. 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 petitioners.

7. Petitioners are directed to contact the Investigating Officer of the case on 16.02.2018, and on such subsequent dates as may be instructed by

him (I.O.) for interrogation and investigations.

8. When the investigation of the case will be conducted, it will either culminate into filing of the charge-sheet or submission of final report. This

Court has no occasion to interfere in the investigation in between.

9. Unless an extraordinary case of gross abuse of power is made out by that in-charge of investigation, the court should be quite loath to interfere

at the stage of investigation, a field of activity reserved for Police and Executive. {State of Bihar and another vs. J.A.C. Saldanha and others, 1980

SCC (Cri .) 272}.

10. Therefore, it will be of no use keeping the present criminal writ petition pending. Criminal Writ Petition is, accordingly, disposed of at the

admission stage itself, with the consent of learned counsel for the parties, who

are present.

11. The Court does not feel it necessary to issue notice to the private respondent, yet opportunity of hearing shall be granted to him if he

approaches the Court on his own, either in person or through counsel, and if he feels aggrieved with this Order, which is purely based upon

statutory foundation. [Vishnu Agarwal vs. State of Uttar Pradesh and another, (2011) 14 SCC 813 and Asit Kumar Kar vs. State of West

Bengal, (2009) 2 SCC 703.]

12. Urgency application also stands disposed of.