

(2017) 01 UK CK 0049
In the Uttarakhand High Court
Case No : 128 of 2017

Jabbar Hussain

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 31-01-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 41 - When police may arrest without warrant
Indian Penal Code, 1860, Section 420,
Section 468, Section 471 -
Cheating and dishonestly inducing delivery of property - Forgery for purpose of cheating - Using as genuine a forged document

Citation : (2017) 01 UK CK 0049

Hon'ble Judges : U.C. Dhyani

Bench : Single Bench

Advocate : S.S.Yadav, M. A. Khan, Milind Raj

Final Decision : Disposed

Judgement

1. By means of present writ petition, the petitioner seeks the following reliefs, among others:

"(a) Issue a writ, order or direction in the nature of certiorari quashing the impugned FIR dated 13.01.2017, registered as Case Crime No. 0012/2017, under Sections 420, 468 and 471 IPC, PS Ram Nagar, District Nainital, investigated by the respondent no. 2 (Annexure No.6). (b) Issue a writ, order or direction in the nature of mandamus commanding the respondent nos. 1 & 2 not to arrest the petitioner in Case Crime No. 0012/2017, under Sections 420, 468 and 471 IPC, PS Ram Nagar, District Nainital."

2. Heard learned counsel for the petitioner, learned counsel for the State, perused the documents brought on record and considered the grounds taken up in the writ petition.

3. A first information report was lodged by Gram Pradhan of village Jhirna.

According to the first information report, present petitioner is Kanoongo of the said District and the allegation against the petitioner is that certain irregularities were committed by him in exchange of land after taking money. As per the FIR measurement of the land was also not proper. It is the submission of learned counsel for the petitioner that the allegations levelled against the petitioner are incorrect. The petitioner has retired from service and at present is an advisor to the Government.

4. In view of the above, this court proposes to pass the following orders:

"The petitioner should be arrested only when the Investigating Officer has reason to believe, on the basis of information and material collected, that he has 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 petitioner 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."

5. 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 of the petitioner.

6. Petitioner is directed to contact the Investigating Officer of the case on 07.02.2017, and on such subsequent dates as may be instructed by him (I.O.) for interrogation and investigation.

7. 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.

8. 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.

9. In the given facts and circumstances of the present writ petition, this Court does not feel it necessary to issue notice to the private respondent. Still, liberty is granted to her to move for recall of this Order, if she feels aggrieved with the same.

10. Urgency application being IA No. 569 of 2016 also stands disposed of.