

(2016) 02 UK CK 0007

In the Uttarakhand High Court

Case No : Criminal Writ Petition No. 139 of 2016

Narendra Singh Dharamshaktu and 3 others

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 04-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 323, 498A, 504, 506

Citation : (2016) 93 ACrC 859 : (2016) 161 AIC 820 : (2016) 3 DMC 548

Hon'ble Judges : U.C. Dhyani, J.

Bench : Single Bench

Advocate : B. M. Pingal, Brief Holder, for the Respondent

Final Decision : Allowed

Judgement

U.C. Dhyani, J. (Oral) - By means of present writ petition, the petitioners seek to quash the impugned FIR no. 127 of 2015, dated 25.09.2015, lodged by the respondent no. 3, under Sections 498-A, 323, 504 and 506 of IPC and Section of the Dowry Prohibition Act, PS Mukhani, District Nainital. A further prayer has been made to direct the respondents not to take any coercive steps against the petitioners in the above said case.

2. It is the submission of learned counsel for the petitioners that the allegations levelled against the petitioners are general in nature. It is also submitted that there is no allegation of any grievous injuries being sustained by the victim. It is further contention of learned counsel for the petitioners that it is a familial dispute in which an interim protection should be granted to the petitioners.

3. Learned AGA submitted that the investigation of the case is under progress and it will take sometime to complete the same.

4. 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 v. 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.

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, if any, of the petitioners.

6. The petitioners shall contact the I.O. of the case on 10th February, 2016 and on such subsequent dates as may be directed by the Investigating Officer.

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

8. If the petitioners do not appear before the Investigating Officer on 10.02.2016 as directed or respondent no. 3 is otherwise aggrieved with this order, liberty is granted to the respondent no. 3 for recalling this Order.

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

10. Both the applications (IA No. 807 of 2016 as well as CLMA No. 860 of 2016) also stand disposed of.