
(2011) 08 UK CK 0174

In the Uttarakhand High Court

Case No : Delay Condonation Application No. 993 of 2011 in Criminal
Miscellaneous Application No. 227 of 2011

No. 15393681H Niak Niranjana Das Chand

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 25-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 279, 304A, 337, 338, 427

Citation : (2011) 08 UK CK 0174

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prafulla C. Pant, J.—Heard.

2. By means of this petition, moved u/s 482 of Code of Criminal Procedure, 1973, the Petitioner has sought quashing of the order dated 15.10.2010, passed by Chief Judicial Magistrate, Nainital, whereby said court has declined to transfer the proceedings of State v. Niranjana Das, Criminal Case No. 1838 of 2009 relating to offences punishable u/s 279, 304A, 337, 338 and 427 I.P.C. to the commanding officer u/s 475 of Code of Criminal Procedure.

3. Learned Counsel for the Petitioner drew attention of this Court to Section 475 of Code of Criminal Procedure, 1973, which provides that the subject of Army Act, the Navy Act and the Air Force Act, may be tried by a Court to which the Code applies or by a Court-martial. It further provides that the Magistrate under the aforesaid court shall in proper matters, transfer the case to the Commanding Officer of the Area.

4. Admittedly, the Petitioner is a subject to Army Act. It is also not disputed that the Respondent No. 3 General Officer Commanding Northern Area Barielly C/o 56 A.P.O. has already made a request to the Chief Judicial Magistrate, Nainital vide letter dated 26.08.2010, (Annexure-5 to the petition) requesting for transfer of

the case. However, the Chief Judicial 3 Magistrate, vide the impugned order, in its wisdom, has declined to transfer the case. The only ground mentioned by the Magistrate is that one of the prosecution witnesses has already been examined. However, there is No. such Bar in Section 475 of Code of Criminal Procedure, not to transfer the case where a witness has already been examined.

5. Rules regarding Adjustment of Jurisdiction of Civil and Military Courts Over Military Personnel Accused of Civil Offences made are notified under S.O 488 dated 9th of February 1978 u/s 475 of Code of Criminal Procedure Rule 4 of said Rules provide that the Magistrate shall inform the Army Authority about the pendency of the trial of a subject to Army Law. It is further provided in Rule 5 of said Rules that on receiving request from the Army Authority, the Magistrate shall stay the proceedings. In the present case not only the accused, but also the Commanding Officer have requested for transfer of the trial to the commanding officer for court-martial.

6. In the above circumstances, this Court finds that the learned court below has erred in law in refusing the request of the accused and the Army Authority. Accordingly, the petition u/s 482 of Code of Criminal Procedure, is allowed, impugned order dated 15.10.2010, is set 4 aside. The request vide letter dated 04.10.2010 made by General Commanding Officer Northern Area Barielly is hereby allowed. Chief Judicial Magistrate, Nainital is directed to transmit the record of Criminal Case No. 1838 of 2009 to the G.O.C., Northern Area, Bareilly, C/o 56 A.P.O. for trial of the case against the accused Niranjn Das (No. 15393681H Naik).