
(2021) 07 UK CK 0038

In the Uttarakhand High Court

Case No : Criminal Writ Petition No. 1686 Of 2017

Rajendra Prasad Bamrara

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 07-07-2021

Acts Referred:

Indian Penal Code, 1860 — Section 409, 420, 467, 468, 471
Code Of Criminal Procedure, 1973 — Section 197

Citation : (2021) 07 UK CK 0038

Hon'ble Judges : Ravindra Maithani, J

Bench : Single Bench

Advocate : Vikas Bahuguna, Pratiroop Pandey, Lalit Miglani, Lata Negi, Navnish Negi

Final Decision : Dismissed

Judgement

Ravindra Maithani, J

1. Instant writ petition was filed for quashing of the FIR No.1 of 2017, under Sections 409, 420, 467, 468, 471 IPC, Police Station Udaipur Valla-5,

District Pauri and directions that the petitioner be not harassed pursuant to the FIR.

2. The petition was heard on 13.10.2017, when the Court passed the following order:-

Mr. Vikas Bahuguna, Advocate for the petitioner.

Mr. S.K. Chaudhary, Deputy Advocate General for the State of Uttarakhand.

Mr. T.S. Phartiyal, Advocate for respondent no.3.

Heard.

Admit.

Three weeksâ?? time is granted to the counsel for the respondents to file their counter affidavits.

Learned counsel for the petitioner contended that total amount of Contributory Provident Fund account has deposited in the account of Chief

Education Officer/Manager of the institution whereas the submission of Mr. T.S. Phartiyal, Advocate for the complainant is that Contributory

Provident Fund money was taken by the petitioner and was kept by him. Mr. Phartiyal, further submitted that even if the amount is deposited but the

offence is made out against the petitioner. He submitted that this is factual controversy and the stand of the State is yet not known.

Mr. S.K. Chaudhary, Deputy Advocate General submitted that he may be given shortest time for getting this fact verified from the competent person

and he will inform the Court about the same on the next date fixed. He requested that the case be listed on 26.10.2017 immediately after fresh cases.

List this case on 26.10.2017.

Considering the submission of learned counsel for the parties, it is directed that till 26.10.2017, no coercive steps shall be taken against the petitioner in

connection with FIR No.01 of 2017 dated 06.10.2017 for the offences punishable under Sections 409, 420, 467, 468, 471 IPC, Police Station Udaipur

Valla5 District Pauri provided he cooperates with the investigating agency in the investigation of the case.

Interim relief application stands disposed of.

Petitioner is directed to appear before the Investigating Officer on 17.10.2017 for recording his statement and also for giving his explanation.

Investigating Officer will also hear the complainant in respect of his case.

It is directed that in case petitioner does not cooperate with the investigating agency, it will be open for the complainant to move stay vacation

application. It is also directed that in case some credible evidence is found against the petitioner, in that event, Investigating Officer will be at liberty to

prosecute against the petitioner in accordance with law.

Let the certified copy of this order be supplied to the counsel for the parties today itself on payment of usual charges.â??

3. The hearing of the petition continued. On 17.08.2020, a statement was given by the learned State counsel that:-

â??Investigating Officer has completed the investigation, but, chargesheet is yet

to be filed.â??

4. On 22.09.2020, what happened before the Court is reproduced as hereunder:

â??Mr. Vikas Bahuguna, Advocate for the petitioner.

Mr. Pratiroop Pandey, DAG for the State.

Mr. Navnish Negi, Advocate for private respondent.

This matter is heard through Video Conferencing.

On behalf of the petitioner, it is urged that on 17.08.2020, a statement was given on behalf of the State that investigation has been completed,

therefore, the writ petition has become infructuous.

Since, the writ petition has become infructuous, it stands disposed of accordinglyâ??

5. The instant petition accordingly stood disposed of then. Now, petitioner has filed a recall application and a release application. It is stated that

despite statement having been given to the Court that investigation has been completed and the proceedings of the writ petition stood disposed of, the

petitioner has been arrested. According to the petitioner, his detention is illegal. Petitioner also seeks his release. A few facts may be narrated that

after his arrest the petitioner also moved applications for bail, which has been rejected by the court below.

6. Heard learned counsel for the petitioner, learned State counsel and learned counsel for the private respondent no.3 through video conferencing.

7. Learned counsel for the petitioner would submit that after a statement having been given to the Court that investigation had been completed, the

Investigating Officer could not have arrested the petitioner. According to him, had such statements been not given, he would have continued pressing

the instant writ petition on 22.09.2020. He also argued that interim protection was granted on 13.10.2017 which came to an end on 22.09.2020, when it

was told to the Court that the investigation had been completed. In fact, what is impliedly been argued is that despite having been told to the Court that

investigation had been completed, the Investigating Officer continue with the investigation and arrested the petitioner, which is bad in the eye of law.

8. On behalf of respondent no.3, the private respondent, learned counsel would submit that the interim order was not absolute, it was conditional.

Learned counsel referred to the order dated 13.10.2017.

9. Learned State counsel would also submit that on 22.09.2020, the Investigation was not complete and Investigating Officer had not informed that investigation had been completed then. In fact, the Investigating Officer also joined the proceeding today and according to her, the stay was vacated by this Court in the instant petition on 22.09.2020. According to her, on that date the investigation had not been concluded. The prosecution sanction was being obtained by the Investigating Officer.

10. Learned counsel for the petitioner would further submit that once the illegal arrest is rectified, he would withdraw the petition and the petitioner would appear before the concerned court within a period of six weeks.

11. The Court takes on record the statement given by the learned counsel for the petitioner.

12. In fact, what was communicated to the Learned State Counsel on 17.08.2020, has been placed before the Court for perusal. It reveals that the Investigating Officer did not tell the State counsel that investigation had been completed. What it tells is that there is adequate evidence against the petitioner and the process for obtaining sanction under Section 197 Cr.P.C. is underway and once prosecution sanction is obtained chargesheet would be submitted. It is a kind of lack of communication, which resulted in order dated 17.08.2020 and 22.09.2020. The Court was wrongly told that on 17.08.2020, investigation had been completed. This mistake has to be rectified and order dated 22.09.2020 deserves to be recalled on this ground alone.

13. Order dated 22.09.2020, passed in the instant petition is recalled. The petition is restored and be registered again.

14. With a communication lapse, the writ petition was disposed on 22.09.2020, which resulted into arrest of the petitioner; it has to be rectified also.

Therefore, let the petitioner be released forthwith.

15. Learned counsel for the petitioner seeks permission to withdraw the petition with the further liberty for the petitioner to appear before the court concerned within six weeks.

16. The permission is accorded.

17. The writ petition is dismissed as withdrawn.

18. However, the petitioner shall appear before the Court concerned within a

period of six weeks from today. The instant order of release passed today is not a bail order. It is an act, by which, the Court has rectified a mistake which crept in its order dated 17.08.2020 and 22.09.2020 due to a wrong communication made to the Court. Once petitioner appears, the court will hear it afresh on the point of his custody and bail.