

(2008) 05 UK CK 0043

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 51 of 2008

Srikant Verma

APPELLANT

Vs

State of Uttarakhand and Another

RESPONDENT

Date of Decision : 06-05-2008

Acts Referred:

Penal Code, 1860 (IPC) — Section 171B, 171E
Representation of the People Act, 1951 — Section 123, 130, 171

Citation : (2008) 3 UC 1393

Hon'ble Judges : Vinod Kumar Gupta, C.J

Bench : Single Bench

Advocate : Vipul Sharma, for the Appellant; G.S. Sandhu, Government Advocate for State, for the Respondent

Final Decision : Allowed

Judgement

V.K. Gupta, C.J.—With the consent of the learned Counsel for the parties, this petition is taken up today for consideration, hearing and final disposal at the motion hearing stage without formally admitting it for hearing.

2. Even though, in the charge-sheet, the Petitioner was charge-sheeted u/s 171 read with Section 123 of the Representation of People Act, 1951 and on being pointed out that Section 123 of the Act, merely defines corrupt practices and does not constitute an offence and Section 171 already has been repealed, in the counter affidavit filed by the Respondents, it has been averred in para "8" that the charge-sheet against the Petitioner is u/s 123 and Section 130 of the Representation of People Act, 1951 read with Section 171E of the Indian Penal Code.

3. I have perused the First Information Report and find that for the following reasons, the prosecution against the Petitioner is not at all maintainable and deserves to be quashed:

4. Section 123 of the Representation of People Act merely defines corrupt

practices and does not constitute any offence.

5. As far as Section 130 of the Act is concerned, on a reading of the First Information Report, it clearly appears on the very face of the First Information Report that the offence u/s 130 has also not been made out because canvassing for votes etc. within a distance of 100 meters of a polling station alone would constitute an offence, but in the First Information Report there is no allegation at all that that acts being committed were done by the Petitioner within 100 meters of any polling station.

6. Section 171E of the Indian Penal Code reads thus:

171E. Punishment for bribery.-Whoever commits the offence of bribery shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both.

Provided that bribery by treating shall be punished with fine only.

7. Bribery has been defined in Section 171B, which reads thus:

171B. Bribery.-(1) Whoever-

(i) gives a gratification to any person with the object of inducing him or any other person to exercise any electoral right or of rewarding any person for having exercised any such right; or

(ii) accepts either for himself or for any other person any gratification as a reward for exercising any such right or for inducing or attempting to induce any other person to exercise any such right;

commits the offence of bribery:

Provided that a declaration of public policy or a promise of public action shall not be an offence under this section.

(2) A person who offers, or agrees to give, or offers or attempts to procure, a gratification shall be deemed to give a gratification.

(3) A person who obtains or agrees to accept or attempts to obtain a gratification shall be deemed to accept a gratification and a person who accepts a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, shall be deemed to have accepted the gratification as a reward.

8. I have seen the First Information Report carefully and have no hesitation in observing and holding that a very careful glance at it leaves me with no manner of doubt that any ingredient constituting an offence of bribery as explained in Section 171B, punishable by Section 171E I.P.C. is totally missing in the First Information Report. There is no allegation nor any mention in the First Information Report about any act being committed by the Petitioner which would amount to commit an offence of bribery. The charge u/s 171E I.P.C. also,

therefore, cannot be said to have been made out against the Petitioner.

9. For the foregoing reasons, the writ petition is allowed.

10. Proceedings against the Petitioner as well as the summoning order are hereby quashed with all the consequences.