

(2017) 06 UK CK 0041
In the Uttarakhand High Court
Case No : 110 of 2015

Surendra Aggarwal

APPELLANT

Vs

Chief Information Commissioner & others

RESPONDENT

Date of Decision : 22-06-2017

Acts Referred:

[Constitution of India](#), [Article 226](#), [Article 226](#), [Article 227](#), [Article 227](#), [Article 245\(1\)](#), [Article 245\(1\)](#) - Power of High Courts to Issue certain writs - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court - Power of superintendence over all courts by the High Court - Extent of laws made by Parliament and by the Legislatures of States - Extent of laws made by Parliament and by the Legislatures of States
[Indian Penal Code, 1860](#), [Section 468](#), [Section 468](#), [Section 471](#), [Section 471](#), [Section 189](#), [Section 189](#), [Section 186](#), [Section 186](#) - Forgery for purpose of cheating - Forgery for purpose of cheating - Using as genuine a forged document - Using as genuine a forged document - Threat of injury to public servant - Threat of injury to public servant - Obstructing public servant in discharge of public functions - Obstructing public servant in discharge of public functions
[Uttar Pradesh Gangsters and Anti-Social Activities \(Prevention\) Act, 1986](#), [Sections 2\(kha\)\(iv\)](#)

Citation : (2017) 06 UK CK 0041

Hon'ble Judges : K.M. Joseph, Alok Singh

Bench : Division Bench

Advocate : B.P. Nautiyal, Mohd. Matloob, Vipul Sharma, Pradeep Joshi

Judgement

1. Appellant is the writ petitioner. The writ petition was filed calling in question order dated 13.08.2013 passed by the second respondent State Information Commissioner.

2. Brief facts, as set out in the writ petition, appears to be as follows: By Annexure No. 1 dated 14.01.2013, Annexure No. 2 dated 18.02.2013 and

Annexure No. 3 dated 16.03.2013, appellant, who claims to be a President of an organization, had sought information from the third respondent. Pursuant to Annexure No. 1, Annexure No. 4 information was provided. Being dissatisfied, appellant filed Annexure No. 5 appeal before the first appellate authority. Annexure No. 6 purports to be an order passed by the first appellate authority. Appellant filed Annexure No. 7 second appeal. He also moved Annexure No. 8 application. Annexure No. 10 purports to be the information provided pursuant to Annexure No. 2 application. Being dissatisfied, appellant filed Annexure No. 11 appeal. Annexure No. 12 is the order passed on Annexure No. 11 appeal. Thereupon, appellant filed Annexure No. 13 second appeal. Annexure No. 14 purports to be the information supplied pursuant to Annexure No. 3 application. Against the same, appellant filed Annexure No. 15 appeal before the first appellate authority. Annexure No. 16 is the order passed in the appeal. Appellant, thereupon, filed Annexure No. 17 second appeal. Annexure No. 18, according to the appellant, is an order passed by the second appellate authority finding some merit in the case of the appellant. Then, appellant filed Annexure No. 19 application before the Chief Information Commissioner to transfer the case from the second respondent State Information Commissioner. Annexure No. 20 is the order by which the second respondent clubbed all the four appeals and, finally, by Annexure No. 21 dated 13.08.2013, the second respondent State Information Commissioner dismissed the appeals. Apart from dismissing the appeals, the State Information Commissioner also proceeded to take a strong view that the appellant would appear to be guilty of offences including under Sections 186 and 189 of the Indian Penal Code. He also was of the view that the appellant would appear to be guilty of offences under Sections 468 and 471 of the Indian Penal Code. This is besides adverting to the Uttar Pradesh Gangsters and Anti- Social Activities (Prevention) Act, 1986. It was found that, under Sections 2(kha)(iv), (viii), (ix) of the said Act, prima facie, an offence is made out against the appellant and it was also found that the District Magistrate is the most important officer of the district and it is the duty of the District Magistrate to maintain peace, law and order in the district and, for this, he has got several statutes. Accordingly, it was held as follows: "Hence it is expected from the District Magistrate Dehradun that by taking note of above opinion of Commission, necessary action be taken against the appellant and inform the Commission about the action within one month so that fearless atmosphere be made in between officers / employees and no shame could be felt by the RTI activist who works honestly and no problem would come to them and occupation of journalist may not feel shame and the persons or unions who are working honestly in the area of RTI they may not be discouraged and do the work as per law in district."

3. The learned Single Judge dismissed the writ petition. Feeling aggrieved, appellant is before us.

4. We have heard Mr. B.P. Nautiyal, learned Senior Counsel, assisted by Mr. Mohd. Matloob, learned counsel for the appellant; Mr. Vipul Sharma, learned counsel appearing for the second respondent; and Mr. Pradeep Joshi, learned

Standing Counsel appearing on behalf of respondent Nos. 3 & 4.

5. A contention was raised regarding the maintainability of the special appeal. Rule 5 of Chapter VIII of the High Court Rules provides as follows: "5. Special appeal. - An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction) in respect of a decree or order made by a Court subject to the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal jurisdiction or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award - (a) of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or (b) of the Government or any Officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge."

6. The proceedings in this case, which are subjected to attack under Article 226, have been initiated under the Right to Information Act, 2005. The Right to Information Act has been passed by Parliament. We have already culled-out the purport of Rule 5 in our judgment in the case of Intezar Hussain & another vs. State of Uttarakhand & others, reported in 2015 (2) UD 261, where we have taken the view that, among judgments which are rendered non-appealable, is a judgment rendered by a learned Single Judge in a writ petition filed under Article 226 or 227, where an order is passed by a Tribunal, Arbitrator or court purporting to act under any U.P. enactment or an enactment by Parliament purporting to be in the exercise of legislative entries in the Concurrent List or in the State List. Also, a judgment rendered by a learned Single Judge in a writ petition under Article 226 or 227 is not amenable to appeal, if an order is passed by a revisional or appellate authority purporting to act under any of the said enactments. If the Right to Information Act has been enacted by Parliament in exercise of the legislative power available under Article 245, read with any of the entries in the Concurrent List, this appeal is not maintainable. Quite obviously, the Right to Information Act is not a State Act. Though we heard the learned counsel for the parties, Mr. Vipul Sharma, learned counsel appearing for the State Information Commissioner and Mr. Pradeep Joshi, learned Standing Counsel appearing for the State were unable to point out any entry in List II or List III as the entry under which the Right to Information Act could be said to be enacted. Entry 97 of List I to the Seventh Schedule reads as follows: "97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists."

7. Therefore, on the submissions, which are made before us, we come to the conclusion that, in the absence of any specific entry in List II or List III, the Right to Information Act can be traced to Entry 97 of List I. If that be so, the Right to

Information Act must be treated as has been enacted in exercise of legislative power under Article 245(1), read with Entry 97 of List I. This means that the orders passed, even if by an appellate authority under the Right to Information Act, would not come within the scope of the prohibition contained in Rule 5 of Chapter VIII. Therefore, we proceed to hold that the special appeal is maintainable.

8. On the merits of the matter, learned Senior Counsel for the appellant would submit that the second respondent State Information Commissioner has clearly acted beyond his powers conferred on him under the Right to Information Act. There is no power with him, in other words, to ask the Magistrate to conduct an investigation into the alleged offences and to report back to him.

9. Mr. Vipul Sharma, learned counsel for the second respondent, also would submit that the Act does not give any such authority to seek such action from the District Magistrate. He, no doubt, would point out the background of the appellant. According to him, appellant, purporting to invoke the Right to Information Act, has been indulging in sheer blackmailing of officers. Complaints were received from many quarters in this regard and it is this which led the second respondent to take action on the basis that cognizable offences are committed and it, therefore, became his duty to bring it to the notice of the authority for suitable action as per law.

10. We, incidentally, notice that Sections 186 and 189 of the Indian Penal Code are described under the category of non-cognizable offences. We, in fact, found that, under the Right to Information Act, there is no power even to impose cost on an applicant, who is found to misuse the provisions of the Act. The Right to Information Act was enacted as a most welcome piece of Legislation to make the administration more transparent, to see that the Nation is able to advance and also to get rid of the scourge of corruption in public life. It is also intended to spur administrative action rendering the holders of public offices and others, otherwise coming under the Act, accountable. Undoubtedly, there would be misuse of the Legislation, as there would be of any Legislation for that matter.

11. Having noticed the directions, which we have extracted hereinbefore, we find that there is no authority with the State Information Commissioner to ask the District Magistrate to conduct an inquiry and to report back to the Commissioner. In such circumstances, we are of the view that the appeal must be allowed to the extent of setting aside that portion. We do so. We, however, make it crystal clear that this will not stand in the way of any competent officer taking any action against the appellant, however, strictly in accordance with law.

12. The appeal is, accordingly, allowed. There will be no order as to cost.