

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

Criminal Misc. Application No. 66 of 2012

V.P. Singh ...Petitioner

Versus

State of Uttarakhand and another ...Respondents

Mr. Dushyant Mainali, learned counsel for the petitioner.
Mr. S.S. Adhikari, A.G.A. for the State of Uttarakhand.

Hon'ble Servesh Kumar Gupta, J.

Having heard urgency application no. 443 of 2012, it is allowed for the reasons stated therein.

Heard Mr. Dushyant Mainali, learned counsel of the applicant as well as Mr. S.S. Adhikari, learned A.G.A. on behalf of the State.

By way of this petition moved under Section 482 Cr.P.C. the order of the Chief Judicial Magistrate, Nainital is under challenge, whereby he has issued non-bailable warrant to the accused. Petitioner Mr. V.P. Singh, in order to ensure his presence in the court for the offence under Section 504 and Section 3(10) of the SC/ST Act. The cognizance was taken by him on 15.3.2002. Since then the matter was pending in the court and several attempts have been made by the court to ensure the presence of the accused, but in vain. Now the contention of the learned counsel of the petitioner is that there is a special Act titled as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and as per the provisions of Sections 14 and 15 of the same, there are special courts, which have been constituted by the State Government and it is only that special court who is competent to take cognizance in the matter and no other court.

This contention of the learned counsel of the petitioner is refutable on the precedent laid down by Hon'ble Apex Court in **Moly Vs. State of Kerala [(2004)]**

SAR (Cri) 400] where it was held that the court of session (special court) cannot take cognizance of the offences straight away without the case being committed to it by learned Magistrate in accordance with provisions of section 193 Cr.P.C. The complaint or chargesheet cannot straight away be laid down before it. In yet another case **M.A. Kuttappan Vs. E. Krishna Nayannar [(2004) SAR (Cri) 308 S.C.]** it was held that the appellant/complainant filed a complaint in the court of the special judge – special judge took cognizance of the offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and the Protection of Civil Rights Act, 1955 – section 193 of the Cr.P.C. and Section 14 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, impose an interdict on all courts of sessions against taking cognizance of any offence as court of original jurisdiction. – The Special Judge had no jurisdiction – the special judge erred in entertaining a complaint filed before it and in issuing process after taking cognizance without the case being committed to it for trial by a competent magistrate.

In view of the above precedent of the Hon'ble Apex Court, this petition is meritless and is liable to be dismissed and the petition is dismissed.

(Servesh Kumar Gupta, J.)

Dated: 31.1.2012
VKG

Vacation Judge