

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

Criminal Misc. Application No. 101 of 2012

Kanta Prasad ...Petitioner

Versus

State of Uttarakhand and another ...Respondents

Mr. Siddharth Singh, Advocate 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. 583 of 2012, it is allowed for the reasons stated therein.

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

It appears that the applicant/petitioner as well as respondent no. 2 are here relatives to each other and Smt. Kamla Devi, respondent no. 2 filed a criminal complaint way back in 1997. The incident was of 25.8.1997 and the order of cognizance passed by the learned Magistrate was of 18.9.1997. That order of cognizance was challenged before the Hon'ble Allahabad High Court and the operation of the same was stayed. It has been contended on behalf of the learned counsel of the applicant that before arrival of the stay order passed by the Hon'ble Allahabad High Court the complaint was got deliberately dismissed by the complainant, so the order passed by the Allahabad High Court automatically become infructuous. It has been contended that Smt. Kamla Devi has filed a second complaint on 3.12.1997 with the same facts but the learned Magistrate refused to pass any cognizance order. The order of refusal passed by the learned Magistrate was challenged by way of a revision by the complainant and the revisional court having heard the same directed the learned Magistrate to pass an appropriate orders after considering the evidence

led by the complainant. The matter remained pending for more than a decade for one reason or the other and the learned Magistrate on 26.11.2011 passed the order directing the complainant to approach the appropriate authorities for seeking sanction under Section 197 of Cr.P.C. to prosecute the petitioner. This order dated 26.11.2011 was challenged by way of filing revision no. 58 of 2011 in the court of sessions judge. The argument has been advanced that in the revision only the State Government has been made a party and the applicant/petitioner thus will not get any opportunity to put forth his submission before the learned court of revision.

It can also significantly be noted that the prior to the order dated 26.11.2011 passed by the learned Magistrate, petitioner Kanta Prasad challenged the entire proceedings before this Court by way of petition under Section 482 of Cr.P.C. and this Court vide order dated 25.11.2011 was not inclined to accept the petition even for hearing and dismissed the same summarily with the observation that the trial shall proceed and decide the criminal case as expeditiously as possible.

The learned counsel for the petitioner has relied upon the precedent [(1975) 3 Supreme Court Cases 706] Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and others. In the said precedent Hon'ble Apex Court while interpreting section 561 A (analogous to Section 482 of the present Cr.P.C.) it was held that in the chain circumstances, the second petition under Section 482 of Cr.P.C. is not maintainable before the court notwithstanding the dismissal of the same at some point of time by the High Court.

Having heard the learned counsel for the petitioner what this Court has been able to gather from the facts and circumstances of the case that the petitioner Sri

Kanta Prasad should have an opportunity to put forth the submission while revision no. 58 of 2011 is adjudicated by the learned Magistrate, Pauri Garhwal and in view of this Court there is sufficient ground to quash the proceedings of the criminal revision no. 58 of 2011 or revision no. 19 of 2010. His grievances will be addressed if the opportunity is rendered to him for hearing while adjudicating the criminal revision no. 58 of 2011. So the learned Magistrate is directed to implead the petitioner Kanta Prasad as respondent in the said revision and then adjudicate the same.

With this direction the petition is finally disposed of.

(Servesh Kumar Gupta, J.)

Dated: 31.1.2012
VKG

Vacation Judge