

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

Writ Petition (Criminal) No. 453 of 2012

Mahesh Kumar Sharma Petitioner

versus

State of Uttarakhand & others Respondents

Mr. B.M.Pingal, Advocate for the petitioner.

Mr. Vipul Painnuly learned AGA for the State/respondent nos. 1 & 2.

Hon'ble U.C. Dhyani, J. (Oral)

1. Heard.
2. By means of the present writ petition, moved under Article 226 of the Constitution of India, the petitioner has sought quashing of the First Information Report dated 24.04.2007 relating to offences punishable under Sections 420, 384, 511 and 120B IPC at Police Station Jwalapur, District Haridwar.
3. Learned counsel for the petitioner submitted that the complainant Rajkishor Singh Pharswan, Inspector, C.B.C.I.D. has lodged the First Information Report against the petitioner who is Lecturer in Arihant College of Education, Badhedi Rajputana, Haridwar without proper investigation and application of mind. He also, *interalia*, submitted that although writ petition of co-accused Om Prakash Sharma was dismissed by this Court (being WP(Crl.) No. 321 of 2012) vide order dated 21.05.2012 and writ petition of another accused Deepak Jain was decided by this Court (being WPCRL No. 441 of 2012) vide order dated 24.05.2012 but

the case of the present petitioner is on different footing. It was stated that when the petitioner came to know about the misdeeds of the others, he immediately refunded the money to the students. This conduct of the petitioner clearly proves beyond doubt that the intention of the petitioner was not malafide.

4. Learned counsel also submitted that the students who made the complaint were not in the list of students selected against the Management Quota and therefore, there was no question of giving them admission.
5. It is also argued that the matter pertains to the year 2005-06 and the list of candidates to be given admission during that academic year was provided by the University. The Institute had no discretion in the matter of admission during that year. On 01.05.2006 an advertisement was published by Secretary, Education, Government of Uttarakhand indicating that the students may apply directly to the University and the merit list shall be prepared by the University itself, hence there was no role of the Arihant College of Education, Badhedi Rajputana, Haridwar in providing admission to anybody. The fee structure was already mentioned by the Secretary, Education in advertisement dated 09.03.2006, hence any allegation to the contrary is unfounded and without basis. Even if it be conceded for the sake of argument that demand for money was made, that itself does not constitute any offence. In any case, the allegation against petitioner Mahesh Kumar Sharma was not beyond raising a demand for money.
6. Learned Counsel also argued that those who paid money have been refunded their amount. Complainants were neither

selected nor were in the waiting list of admission to B. Ed. course.

7. Mr. Vipul Painuly learned counsel representing the State opposed the writ petition and submitted that the investigation in the instant case is almost completed. Involvement of the petitioner has been found by the Investigating Officer. Mr. Painuly brought to the notice of this Court that the Investigating Officer has moved for permission of Principal Secretary, Government of Uttarakhand for filing the charge-sheet against the petitioner. Since the FIR was lodged at the instance of Principal Secretary therefore permission was being sought from him by the Investigating Officer to submit charge-sheet against the petitioner.
8. Having considered submissions of learned counsel for the petitioner and learned counsel for the State, this court is of the opinion that it is not a fit case in which a writ in the nature of certiorari should be issued to quash the FIR dated 24.04.2007 relating to offences punishable under Sections 420, 384, 511 and 120B IPC at Police Station Jwalapur, District Haridwar. The writ petition is accordingly, dismissed at the admission stage itself.
9. Learned counsel for the petitioner made an alternative prayer for directing the Magistrate concerned to expedite the disposal of Bail Application of the petitioner if he surrenders before the court.
10. No party will feel prejudiced if a direction is issued by this Court to expedite the hearing of the bail application of the petitioner provided sufficient opportunity is given to the

learned prosecutor to oppose the same and bring desired documents on record.

11. Considering the facts and circumstances as enumerated above, it is directed that in case the present petitioner surrenders before the Magistrate concerned and moves an application for bail, the same shall be expedited. It is made clear that the prosecutor opposing the bail application shall be given adequate opportunity of hearing and placing necessary documents which might be found necessary for proper disposal of bail application.
12. Interim Relief Application (CLMA No. 5190 of 2012) also stands disposed of.

(U.C. Dhyani, J.)
25.05.2012

Kaushal

