

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Criminal Misc. Application No.937 of 2007  
(U/s 482 Cr.P.C.)**

M/s Vishal Bakers through its proprietor Mr. Ashok Kumar Gujral  
..... Petitioner

**Versus**

State of Uttarakhand & others ..... Respondents  
**Dated: February 29, 2012**

Sri Sandeep Tandon, Advocate for the petitioner  
Sri P.S. Bohara, Brief Holder for the State of Uttarakhand/respondents

**Hon'ble Servesh Kumar Gupta , J.**

By means of this petition, moved u/s 482 Cr.P.C., the prayer has been advanced to set aside the judgment and order of learned City Magistrate, Dehradun dated 28.7.2005 passed in criminal case no.6/2004, *State Vs. M/s Vishal Bakers* pertaining to Section 133 Cr.P.C., P.S. Kotwali Dehradun. The said judgment was affirmed by the court of Additional Sessions Judge/FTC-II, Dehradun on 27.10.2007, by way of dismissal of criminal revision no.107/2005, filed by M/s Vishal Bakers situated at Moti Bazar, Dehradun, through its proprietor Sri Ashok Kumar Gujral.,

The background facts transpire that Uttaranchal Environment and Pollution Control Board, on the basis of spot inspection made on 7.6.2004, submitted a report to the court of City Magistrate on 11.6.2004, complaining that petitioner is running a bakery which has been a cause of big pollution in the surrounding area because a large quantity of smoke emanates from the device used for baking. It was also complained that no requisite certificate (no objection certificate) was ever obtained by the Industry from the Pollution Control Board. The notice was issued by City

Magistrate to the proprietor of Industry, who filed his objection to the effect that he himself resides on the first and second floor of his industrial unit and the furnace of the bakery is only activated once in 24 hours and that too at the night time, which are the hours of sleeping of surrounding people. It was further contended that in the furnace, only the woods are burnt, which do not cause any pollution. Learned City Magistrate fixed the matter for hearing for so many dates ever since the filing of objection on 3.12.2004 by M/s Vishal Bakers. Thereafter, the continuous adjournments were sought by the petitioner and later, he became absent. So, learned City Magistrate, after exhausting more than six months' time for granting several opportunities to M/s Vishal Bakers, decided the matter *ex parte*, wherein all the objections presented by Industry were considered by him. Learned City Magistrate was of the view that M/s Vishal Bakers had been granted more than enough time but he was deliberately lingering on the matter and not permitting the court to adjudicate upon the same. So, he decided the matter on 28.7.2005 by passing the impugned order, thereby ordering to remove the Industry from the designated point. In alternate, he also directed to get it regulated from Pollution Control Board.

Feeling disgruntled, petitioner filed a revision no.107/2005 which was also dismissed by learned Additional Sessions Judge, Dehradun on 27.10.2007 and in the last paragraph of revisional court's judgment, it has been stated that repeated adjournments were sought by the petitioner/revisionist for one reason or the other and ultimately, he became absent. Learned Judge, accordingly, ratified the order of City Magistrate, in the said revision.

Learned counsel for the petitioner argued that that the matter may be remitted to the City Magistrate for rendering an opportunity to the petitioner for adducing evidence in his favour, whereas learned brief holder has argued that in fact the petition is defective since the main contending party, i.e. Uttaranchal Environment and Pollution Control Board, has not been arrayed as respondent in the petition. Rather, simply the State and Additional Sessions Judge and also the City Magistrate, Dehradun have been impleaded as respondents. This Court do agree with the contention of learned brief holder, inasmuch as, the State/Additional Sessions Judge/City Magistrate has nothing to do with the impugned orders. In the instant case, the main contesting party was Uttaranchal Environment and Pollution Control Board, on whose report, the court of City Magistrate took cognizance of the matter and passed the order impugned. Therefore, it was only the Board who could contest the matter before this Court and not the City Magistrate/Additional Sessions Judge. Besides, this matter is lingering on before this Court for more than four years and has been listed accordingly.

Having heard learned counsel for the petitioner and learned brief holder for the State, this Court feels that the City Magistrate has considered all the objections which were raised, in writing, before him and later on he became helpless to decide the matter *ex parte*, because of the repeated adjournments sought by the petitioner and even later on, he became absent. Learned Additional Sessions Judge was also quite justified while affirming the order of City Magistrate. If the Court remits the matter back to City Magistrate, as prayed by learned counsel for the petitioner, then the continuous operation, by way of emanating the thick smoke, which is persisting for last several years, will remain as it is, leaving the surrounding public at the mercy of this Industry.

In view of the aforesaid facts and circumstances of the case, I am of the view that this petition is quite meritless and liable to be dismissed. Petition is, accordingly, dismissed. Let the information be sent to the court of City Magistrate for implementing its own order, as quickly as possible.

**(Servesh Kumar Gupta, J.)**

February 29, 2012

Rajeev Dang