

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
	<u>31.01.2023</u>		<p>WPCRL No. 163 of 2023</p> <p><u>Hon'ble Sharad Kumar Sharma, J.</u></p> <p>Mr. Arvind Vashisth, Senior Advocate, assisted by Mr. Hemant Singh Mahra, Advocate, for the petitioner.</p> <p>Mr. V.S. Rathore, AGA, for the State.</p> <p>The precise fact of the present writ petition; where the petitioner has put a challenge to the First Information Report i.e. FIR No. 6 of 2023 dated 07.01.2023, where certain set of allegations pertaining to the offences falling under Sections 431 and 447 of IPC, has been registered against him at P.S. Prem Nagar, Dehradun.</p> <p>The learned Senior Counsel for the petitioner has argued the matter from the prospective, that if the contents of the FIR itself is taken into consideration, it relates to that an action for demolition of the alleged construction or the encroachment which has been said to have been made in relation to khasra Nos. 310, 290, 309, 262, in fact, the demolition has already taken place in pursuance to the order passed by the Sub Divisional Magistrate on 02.01.2023.</p> <p>The argument of the learned Senior Counsel for the petitioner is, that once the action of registration of the FIR, it already refers to, that the demolition has already taken place, as such, the allegations levelled in the FIR will not fall within the domain of offences contained under Sections 431 and</p>

			<p>447 of the IPC.</p> <p>The tenacity of argument of the learned Senior Counsel for the petitioner is that the provisions contained under Section 447 of IPC, if it is taken into consideration, it deals with the provisions, as regards to the levying of punishment for an act of criminal trespass. For the purposes of elucidating his argument, he refers to, that in order to bring an offence within an ambit of Section 447, as to be, an act of criminal trespass, the definition of criminal trespass as it has been provided under Section 441 become relevant to be considered.</p> <p>He submits, that owing to the UP Amendment as it has been carried by Act No. 31 of 1961, which was in vogue at the time when State of Uttarakhand was created and would continue to apply in view of the provisions contained under Section 87/88 of the Reorganization Act. The amended provisions as contained and made applicable in the State of U.P., it provided that the action for a criminal trespass, has had to be taken when a person who is alleged to have encroached upon a land is called upon to do so by any other person by “notice in writing” duly serve upon him by the dates specified in the notice to appear in order to fortify the fact as to whether the actual criminal trespass has been made by the applicant who has been noticed or not.</p> <p>The learned Senior Counsel for the petitioner argues that in that regard, he has taken a specific pleading in para 22, to the effect that no notice as contemplated under the provisions contained under Section 441</p>
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		<p>of IPC, as made applicable in the State of U.P. was ever issued to the present petitioner.</p> <p>He further submits that the aforesaid contentions would itself stand fortified that when the FIR was got registered on 07.01.2023 and the FIR self contains a fact that in compliance of the directions issued by the SDM and the consequential directions issued by the ADM on 03.02.2022, when it refers to an act of demolition which has already taken place, in that eventuality, the offence complained of will not fall to be under Section 447 of IPC, since in the absence of there being a criminal trespass and its determination made after issuance of notice under Section 441 of IPC, no offence under Section 447 could be made out.</p> <p>But, however, considering the totality of the facts and the circumstances, whether the petitioner was noticed, though it has been pleaded that no notice had been given to the petitioner is a fact which is required to be ventured into during the course of investigation. But apparently since no offence could be said to have been made out, as far as the offence under Section 447 of IPC is concerned, in the absence of there being a prior notice, the writ petition would stand disposed of with a direction that no coercive action would be taken against the present petitioner, subject to the condition of compliance of the directives given by the Hon'ble Apex Court in the judgment Arnesh Kumar Vs. State of Bihar and Another, as reported in 2014 (8) SCC 273.</p>
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