

HIGH COURT OF UTTARAKHAND
AT NAINITAL

Criminal Misc. Application No.789 of 2023

Ankit Rastogi and Another ... Applicants

Vs.

State of Uttarakhand and Another ... Respondents

And

Criminal Misc. Application No.794 of 2023

Ankit Rastogi and Another ... Applicants

Vs.

State of Uttarakhand and Another ... Respondents

And

Criminal Misc. Application No.795 of 2023

Ankit Rastogi and Another ... Applicants

Vs.

State of Uttarakhand and Another ... Respondents

And

Criminal Misc. Application No.796 of 2023

Ankit Rastogi and Another ... Applicants

Vs.

State of Uttarakhand and Another ... Respondents

Present: Mr. Akhil Kumar Sah and Mr. Ayush Agrawal, learned counsel for the applicants.
Mr. A.K. Sah, learned Deputy Advocate General along with Ms. Mamta Joshi, learned Brief Holder for the State.

Hon'ble Sharad Kumar Sharma, J.

These are four C482 applications in which the challenge has been given by the applicants to the respective summoning orders of 27.06.2019, as it has been issued in different complaint cases, being Complaint Case No.1197 of 2022, Complaint Case No.1198 of 2022, Complaint Case No.1196 of 2022 and Complaint Case No.1199 of 2022.

2. In fact, the challenge which has been given to the respective summoning orders are that of 27.06.2019, in fact, it is a highly belated challenge being given by the present applicants and inherent jurisdiction of this Court which will be an equitable jurisdiction available to those litigants who are diligent enough to pursue their legal remedy before the competent Court for an appropriate action is taken against them, within an appropriate time.

3. If litigant sleeps over the rights, the Courts are not meant to abuse the process, which has happened in the instant case because it is an admitted case of the present applicants, that after the issuance of the summoning order the bail was sought by him, and it was granted on 19.02.2020. Meaning thereby that knowledge of the issuance of the summoning order stood attributed to the present applicant, at least on the date, when he was granted bail and, thereafter, still sitting over the issue and not putting a challenge to the summoning order, may it be for whatsoever the legal grounds, he may be having that itself will not entitle him to invoke the inherent jurisdiction under Section 482 of Cr.P.C. for the

reason being that according to a Latin proverb which is extracted hereunder:-

i) **“Vigilantibus Non Dormientibus Jura Subveniunt”**. It provides that *“the law assists only those who are vigilant, and not those who sleep over their rights.”*

4. Since there is a heavy belated challenge given to the summoning order, this Court is not inclined to interfere in the C482 application as against the summoning order in a complaint proceedings under Section 138 of the Negotiable Instruments Act (for short “N.I. Act”) for the reason being that even otherwise also the Statue under Sub-section (3) of Section 143 of the N.I. Act provides for that the proceedings under Section 138 N.I. Act since being summary in nature, it ought to have been decided within a certain specified time frame as prescribed therein.

5. Giving highly belated challenge to the summoning order in 2023, would be in contravention to the provisions contained under Sub-section (3) of Section 143 of the N.I. Act, will in itself be an abuse of a legal process.

6. Though without there being any pleading on record, their reason for delay which is attempted to explain by the learned counsel for the applicant is that after he has sought his bail on 19.02.2020 since Covid was declared and there was a countrywide lockdown by virtue of the notification issued by the Government w.e.f. March 2020, he could not avail his remedy before the Court.

7. This argument is not acceptable to the Court for the reason being that:-

i) As an effect of imposition of lockdown the Courts functioning in the country still continued to operate on virtual mode and the litigants have been filing their cases even during this period when the lockdown was being enforced. If the applicant has chosen not to approach the Court at the relevant point of time he has to blame himself.

ii) The second argument which has been extended by the learned counsel for the applicants is that there was certain casualty in the family. Though, this argument has not been raised by the learned counsel in C482 applications without there being any evidence on record, is not acceptable.

iii) The argument that he could not approach the Court because of Covid-19 conditions is not acceptable because the Courts of the country have opened for last over one year or more whereby the regular proceedings are being conducted. Even if that pleading is accepted then to the applicant has approached the Court at a later stage. This itself will amount to be an abuse of process of law, if 482 application is entertained at this belated stage.

iv) The learned counsel for the applicant has argued that the C482 application engages a consideration of pure question of law with

regard to the non-compliance of the provisions contained under Section 202 of the Cr.P.C. for conducting an inquiry prior to issuance of the summoning order by the Court.

8. The effect of non-compliance of Section 202 of the Cr.P.C. would still be an issue open for the applicant to be raised before the Court before which the proceedings under Section 138 N.I. Act are pending consideration.

9. Hence, while dismissing this C482 application since there being an unexplained delay for a belated challenge being given to the summoning order of 2019, the dismissal of the C482 application would not be a closure of the opportunity for the applicants to raise the question of propriety of non-compliance of Section 202 of the Cr.P.C. if, at all, it engages consideration before the respective Court before which the complaint proceedings are pending consideration, which has to be decided as per Sub-section (3) of Section 143 of Negotiable Instruments Act.

(Sharad Kumar Sharma, J.)

28.04.2023

Sukhbant/