

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			<p>C482 No. 1183 of 2018</p> <p><u>Hon'ble Sharad Kumar Sharma, J.</u></p> <p>Mr. Karan Anand, Advocate, for the applicant.</p> <p>Mrs. Mamta Joshi, Brief Holder, for the State of Uttarakhand.</p> <p>The present applicant is facing the proceedings of Criminal Case No. 70 of 2017, State Vs. Rajeev Kumar Tomar, which are the proceedings registered by respondent No.2, as against the present applicant for commission of the offence under Section 66 (C) of the Information Technology Act, in an FIR No. 35 of 2015, which was registered on 28th August, 2015.</p> <p>Upon investigation and submission of the chargesheet, the cognizance has been taken by the Court of Judicial Magistrate, 1st Class, Pauri Garhwal, District Pauri Garhwal, thereby registering the Criminal Case No. 70 of 2017, State Vs. Rajeev Kumar Tomar.</p> <p>When the C-482 Application was heard at admission stage, the Coordinate Bench had issued notices to respondent No.2 on 19th July, 2018, and there is an office report of 16th August, 2018, that respondent No.2 has received the notices by secondary mode of service, as per the letter of the CJM, Pauri Garhwal.</p> <p>Later on, the C-482 Application was admitted by the Coordinate Bench on 4th July, 2019, and once again, the notices were issued to respondent No.2.</p> <p>Steps were taken. There is an office report of 27.07.2023, that notices have been served on respondent No.2, through his office, but the respondent No.2 has not put in appearance.</p> <p>In these eventualities, the Court proceedings cannot be held up merely because of the fact, that the complainant / respondent, who has been served with the notices, despite of having knowledge of the</p>

			<p>pendency of the C-482 Application, is avoiding to put in appearance or filing the counter affidavit to contest the C-482 Application on its own merits.</p> <p>Be that as it may. Even otherwise also, if the summoning order as issued by the Court of Judicial Magistrate, 1st Class, is taken into consideration, the said order has been passed without application of mind, and it is a cryptic order passed by the Court by filling in blanks in a prescribed format. This could be one of the reasons to exercise the inherent powers under 482 of the Cr.P.C..</p> <p>Apart from it, the offence, for which, the applicant has been summoned by the summoning order dated 4th May, 2017, it is an offence under Section 66 (C) of the Information Technology Act, which carries a sentence of three years, and it would be a minor offence for the purposes of convicting an accused for the allegation, which according to the applicant in the FIR, is not made out because, he was held to be guilty because of the fact that he has issued a threatening messages to respondent No.2.</p> <p>But, in the absence to deny the pleadings raised in the C-482 Application, coupled with the fact, that the applicant was not named in the FIR, but his name has been reflected later on in the subsequent chargesheet submitted by the Investigating Officer, being Chargesheet No. 16/16 dated 1st December, 2016.</p> <p>On the basis of the observation made in the FIR, it cannot be said that the applicant was directly attributed to be involved in commission of the offence under Section 66 (C) of the IT Act.</p> <p>But, primarily, the reason for interference that the respondent No.2 the complainant, despite of service of notice has not put in appearance, to contest the C-482 Application on merits, thus, the grounds taken in the C-482 Application remain uncontroverted, coupled with the fact, that the summoning order itself happens to be a cryptic and non reasoned, which has been passed by filling in blanks, which is contrary to the principles laid down by the Hon'ble Apex Court in the matter of M/s Pepsi Foods Ltd. and another Vs. Special Judicial Magistrate and others, as reported in</p>
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