

Kulanand Goswami vs State Of Uttarakhand And Another on 29 August, 2022

Author: Sharad Kumar Sharma

Bench: Sharad Kumar Sharma

IN HIGH COURT OF UTTARAKHAND
AT NAINITAL

Criminal Misc. Application No.851 of 2022

Kulanand Goswami

.....Applicant

Vs.

State of Uttarakhand and Another

.....Respondents

Advocate: Mr. M.K. Ray, Advocate for the applicant.

Mr. Pratirop Pandey, AGA for the State of Uttarakhand.

Hon'ble Sharad Kumar Sharma, J.

The applicant to the present C-482 application, has put a challenge to the charge sheet dated 15.06.2021; as well as the cyclostyle summoning order dated 22.05.2022 which has been passed by the Judicial Magistrate, Ukhimath, District-Rudraprayag, in Criminal Case No.37 of 2022 State vs. Kulanand Goswami; whereby he has taken cognizance for conducting the trial, for the alleged involvement of the present applicant for his commission of offence under Sections 419 and 465 of I.P.C.

2. The solitary ground, which is pressed by the learned counsel for the applicant is qua the summoning order dated 09.06.2022, whereby the court of Judicial Magistrate, had by way of passing the cyclostyle order by filling up the blanks has issued Form 68, for summoning the present applicant for his participation in the aforesaid Criminal Case No.37 of 2022 State vs. Kulanand Goswami.

3. It is a settled law and as it would be apparent too from the judicial precedence of the Hon'ble Apex Court namely, 1998 Supreme Court 128 M/s Pepsi Foods Ltd. and another vs. Special Judicial Magistrate and others. Para 22 and 28 are extracted hereunder:-

"22. It is settled that High Court can exercise its power of judicial review in criminal matters. In State of Haryana and Ors. v. Bhajan Lal, 1992 (1), SCC 335, this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the courts. Exercise

of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226. Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Article 226 and 227 may be referred to.

"28. Summoning of an accused in a criminal cases is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

4. Further in (2013) 4 Supreme Court Case 505 GHCL Employees Stock Option Trust vs. India Infoline Limited alongwith connected. Para 13 and 19 of the judgment is extracted hereunder:-

"13. There is no dispute with regard to the legal proposition that the case of breach of trust or cheating are both a civil wrong and a criminal offence, but under certain situations where the act alleged would predominantly be a civil wrong, such an act does not constitute a criminal offence."

19. In the order issuing summons, the learned Magistrate has not recorded his satisfaction about the prima facie case as against Respondent Nos. 2 to 7 and the role played by them in the capacity of Managing Director, Company Secretary or Directors which is sine qua non for initiating criminal action against them. Recently, in the case of Thermax Ltd. and Ors. v. K.M. Johny and Ors. while

dealing with a similar case, this Court held as under:

"38. Though Respondent No. 1 has roped all the Appellants in a criminal case without their specific role or participation in the alleged offence with the sole purpose of settling his dispute with Appellant-Company by initiating the criminal prosecution, it is pointed out that Appellant Nos. 2 to 8 are the Ex-Chairperson, Ex-Directors and Senior Managerial Personnel of Appellant No. 1- Company, who do not have any personal role in the allegations and claims of Respondent No. 1. There is also no specific allegation with regard to their role.

39. Apart from the fact that the complaint lacks necessary ingredients of Sections 405, 406, 420 read with Section 34 Indian Penal Code, it is to be noted that the concept of 'vicarious liability' is unknown to criminal law. As observed earlier, there is no specific allegation made against any person but the members of the Board and senior executives are joined as the persons looking after the management and business of the Appellant-Company."

5. Hence, it is settled that summoning of an accused person always has got a serious civil consequences. Passing a non reasoned order without application of mind by the court, is not expected particularly, when it entails upon to force an accused person to face the trial for the offences complaint of against him.

6. Being satisfied with the manner in which the summoning order has been passed, it does not at all reflects that the court had at all applied its mind to the material facts and evidence which was placed before him, necessitating the summoning of the present applicant for participation in the proceedings of Criminal Case No.37 of 2022 State vs. Kulanand Goswami.

7. On this short premise, itself, since the summoning order is without any reason and is in violation of the parameters laid down by the judgment of the Hon'ble Apex Court, as referred to hereinabove, the summoning order could not be sustained and the same is hereby quashed. The matter is relegated back to the court of Judicial Magistrate, Ukhimath, District Rudraprayag, to re- consider the material which had been placed before him on record and then to justify the necessity of summoning the applicant, by assigning reasons of issuing summoning orders, if at all it is required under law to summon the accused for his alleged involvement in the commission of the offences under Section 419 and 465 of I.P.C.

8. Subject to the aforesaid, the matter is remitted back to the court of Judicial Magistrate, Ukhimath, District Rudraprayag to pass a fresh order of summoning but only after considering the material and recording its reasoning, to justify the summoning order, by a judicious consideration, and application of mind.

9. The learned counsel for the applicant has referred to a judgment dated 27.09.2018 which was rendered by this Court in C-482 Application No.1386 of 2018 Intzar vs. State of Uttarakhand in which almost a similar situation arose, that summoning order was passed in a cryptic manner

without assigning any reason or application of mind. How the summoning order was reflecting the application of mind by the trial court at the stage of taking cognizance of offences is a condition precedent.

10. In view of the aforesaid judgment also, the present C-482 application deserves to be allowed for its reconsideration afresh subject to the observations which has been made above.

(Sharad Kumar Sharma, J.) 29.08.2022 Arti