

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI

AND

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

SPECIAL APPEAL NO. 319 OF 2023

19TH SEPTEMBER, 2023

Manoj Kumar

....Appellant.

Versus

State of Uttarakhand & others

....Respondents.

Counsel for the Appellant

:

Mr. Jitendra Chaudhary, learned counsel.

Counsel for the Respondent Nos.1 to 5:

Mr. C.S. Rawat, learned Chief Standing Counsel with Mr. Rajeev Singh Bisht, learned Additional Chief Standing Counsel.

The Court made the following:

JUDGMENT:(per Hon'ble The Chief Justice Sri Vipin Sanghi)

We have heard Mr. Chaudhary, learned counsel for the appellant- writ petitioner, and Mr. Rawat, learned Chief Standing Counsel at length.

2. For disposing of the present appeal, it is not considered necessary to have the presence of respondent no.6, considering the order that we propose to pass.

3. The case of the appellant- writ petitioner in the writ petition is that his documents and name have been misused by respondent no.6 to obtain a liquor license. The payments made for obtaining the liquor license were routed through the bank account attributed to respondent no.6. The appellant claims that even the notices issued to the appellant were not received by him earlier, and were received by respondent

no.6. Reference has also been made to the affidavit statedly filed by the appellant, wherein the mobile number provided is that of respondent no.6, and not of the appellant. The appellant alleges that respondent no.6 has forged and fabricated his signatures on various documents. There is yet another instance of another person cited, who had made a similar complaint regarding the *modus operandi* adopted by respondent no.6. The appellant has already made a complaint in this regard by invoking Section 156(3) of the Code of Criminal Procedure, and those proceedings are pending before the concerned Magistrate.

4. By the impugned order, the learned Single Judge has refused to grant the stay of recovery from the appellant. The recovery is to the tune of Rs.1,90,37,300/-. The writ petition is pending and now listed on 13.10.2023.

5. In our view, the statements of the appellant- writ petitioner need to be examined before recovery of such an staggering amount from him, as such recovery without examining the appellant's defence- which is weighty, may lead to financial death of the appellant.

6. We, accordingly, dispose of this appeal with the following directions:-

1. Subject to the appellant- writ petitioner furnishing to this Court, and also to the respondent- authorities within the next three days, an affidavit

disclosing all his properties and assets- moveable and immovable, along with his current bank statement, and also subject to the condition that the appellant shall not dispose of his moveable and immovable properties and assets, and shall not deplete any amount from his bank account, recovery against the appellant- writ petitioner shall remain stayed.

7. This order shall continue to operate till the next date of hearing fixed before the learned Single Judge, which is 13.10.2023.

8. The learned Single Judge may examine the matter, and take a decision on whether, or not to continue to stay.

9. The appeal is, accordingly, disposed of.

10. Pending application, if any, also stands disposed of.

(VIPIN SANGHI, C.J.)

(RAKESH THAPLIYAL, J.)

Dated: 19th September, 2023

NISHANT