

HIGH COURT OF UTTARAKHAND
AT NAINITAL

C482 Application No. 1853 of 2023

Bharat Singh

... Applicant

Vs.

State of Uttarakhand and Another

... Respondents

Advocate: Ms. Archita Badoni, Advocate, for the applicant
Mr. Bhaskar Chandra Joshi, AGA, for the State

Hon'ble Sharad Kumar Sharma, J.

The instant C482 Application has been preferred by the present applicant, thereby putting a challenge to the proceedings of Criminal Case No. 344 of 2023, State Vs. Bharat Singh, for his alleged involvement in commission of the offence under Sections 409, 420 and 120B of IPC, on the ground that the set of allegations as leveled in the FIR No. 11 of 2023, wherein it was found that he was instrumental in connivance with the named accused persons for fraudulently getting the amount deposited into his two accounts, which was otherwise were to be placed in the ATM boxes, for which the services of CMS India Private Limited, was assigned.

2. There are multifold arguments which has been extended by the learned counsel for the applicant that no offence under Section 409 of IPC is made out against the present applicant for the reason being that he was not an employee of a banker to bring him within the ambit of Section 409 of IPC. But then, if the contents of the para 10 of the C482 Application is taken into consideration, after examination of witnesses, for example that of Devraj, Ashish and Jogendra, who are directly involved in

performance of the duties in relation to the company, which was actually responsible for putting the cash into the ATM boxes. It is revealed that the amount was deposited into the two accounts which were held by the present applicant.

3. To what extent he was responsible for commission of the said offence because there was a siphoning of cash, which was deposited into the accounts of the present applicant would be a subject matter to be decided by the learned trial Court by adducing of evidence because it entails an appreciation of evidence.

4. The learned counsel for the applicant submits that the summoning order itself would be bad in the eyes of law because the same have been issued on 14.08.2023 by the Court of Judicial Magistrate, Gopeshwar, merely on the ground based of on the statement recorded by the present applicant under Section 161 of CrPC.

5. This argument extended by the learned counsel for the applicant that merely because of the summoning order is based on the statement recorded by the applicant under Section 161 of CrPC would vitiate the summoning order is not sustainable in the eyes of law, for the reason being that the Hon'ble Apex Court has observed that at the stage of taking of cognizance of offence or the summoning of an accused person, the credible material or evidence is not required to be appreciated with that decision in order to justify the summoning of an accused person.

6. Only a *prima facie* cognizance is required to be taken by the Court, which should reflect the application of mind,

for the purposes of taking cognizance and issuing the summoning order. What is required is that the Court ceased with the stages of proceedings for issuance of the summoning order has to consider the defence version and the material of arguments which are on record.

7. The aforesaid principle has been laid down by the Hon'ble Apex Court in para 8 of the judgment, as reported in **2015 (3) SCC 424, Sonu Gupta Vs. Deepak Gupta and others**, which is extracted hereunder:-

“8. Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the appellant placed reliance which were called for by the learned Magistrate, the learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor is he required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not.

8. In yet another judgment, rendered by the Hon'ble Apex Court, as reported in **2019 (20) SCC 539, State of Gujarat v. Afroz Mohammed Hasanfatta**, it has considered the implications of Section 190(1)(b) and Section 204(1)(b), as to what has to be the relevant basis for taking of cognizance by the Court for issuance of summons to the accused person. The Hon'ble Apex Court has observed that the requirement is the satisfaction of the

Magistrate regarding the sufficiency of the grounds, requiring the accused person to be summoned by the Court. So it is only a *prima facie* satisfaction which has to be recorded by the Court, prior to issuance of summoning order of an accused person and that principle has been enunciated by the Hon'ble Apex Court in para 15 of the said judgment, which has dealt with the principles basically laid down by the judgment of **M/s Pepsi Foods Ltd. and another Vs. Special Judicial Magistrate and others**, as reported in **1998 (5) SCC 749**. Para 15 of the aforesaid judgment of **State of Gujarat (supra)** is extracted hereunder:-

“15. The first and foremost contention of the respondent-accused is that summoning an accused is a serious matter and the summoning order must reflect that the Magistrate has applied his mind to the facts of the case and the law applicable thereto and in the present case, the order for issuance of process without recording reasons was rightly set aside by the High Court. In support of their contention that the summoning order must record reasons showing application of mind, reliance was placed upon Pepsi Foods Ltd. [Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] The second limb of submission of the learned Senior Counsel appearing for the respondent-accused is that there has to be an order indicating the application of mind by the Magistrate as to the satisfaction that there are sufficient grounds to proceed against the accused irrespective of the fact that whether it is a charge-sheet by the police or a private complaint.”

9. The Hon'ble Apex Court has provided that at the stage when the Court exercises its power under Section 190(1)(b), the only requirement for the Court is to consider the material and record reasons for its satisfaction and sufficiency of the grounds for issuance of summons. Merely because of the fact that the summons have been issued

based on the appreciation of the statement of the present applicant as recorded under Section 161, that itself will not appreciate the summoning order, as issued in the instant case.

10. The learned counsel for the applicant has developed a new case altogether on the basis of the pleadings raised in para 11 of the writ petition that there were certain prejudices which the police authorities were having against the present applicant because of his engagement in commission of offence under Section 360 of the Excise Act because he declined to cater the illegal demand of providing liquor to the police personnel.

11. This new case, which has been carved out in the C482 proceedings will not be relevant at this stage for the reason being that it was not a defence taken by him at the stage when the investigation was being carried nor does it find reference in the statement as referred to by the present applicant and as such a new case cannot be carved out at the stage of C482, when the Court is ceased with the proceedings of summoning order and Chargesheet issued against him.

12. The aforesaid aspect has been yet again considered by the Hon'ble Apex Court as to what does the word 'cognizance and summons' means and the same has been considered in the judgment as reported in **2012 (5) SCC 424, Bhushan Kumar and Another Vs. State (NCT of Delhi) and another**, wherein the Court has provided that meaning of the summons would be the implication for a

person to be summoned who is illegally found to be involved in the commission of offence.

13. The Hon'ble Apex Court, in the aforesaid judgment, in para 12 has dealt with as to what summons means as it entails to call upon a person to appear before the Magistrate for being tried for the offences for which the Chargesheet has been submitted.

“12. A “summons” is a process issued by a court calling upon a person to appear before a Magistrate. It is used for the purpose of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law. In other words, the summons will announce to the person to whom it is directed that a legal proceeding has been started against that person and the date and time on which the person must appear in court. A person who is summoned is legally bound to appear before the court on the given date and time. Wilful disobedience is liable to be punished under Section 174 IPC. It is a ground for contempt of court.”

14. The Hon'ble Apex Court, in para 13 has observed that summons are only an expression given by the Court or Magistrate concerned, giving a sufficient ground to call upon an accused to face the trial. It has been observed that under the Code of Criminal Procedure, nowhere it has been provided that an explicit narration of entire material is required to be made by the Court as to be a mandatory condition for summoning of an accused person because that is not a prerequisite for deciding the validity of the summoning orders.

“13. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for

proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a prerequisite for deciding the validity of the summons issued.”

15. In that view of the matter and particularly after a prolonged hearing and having gone through the summoning order dated 14.08.2023, since the Court has applied its mind based upon the statement recorded by the applicant under Section 161, its implication is not ousted from the provisions contained under Section 190 of the Code of Criminal Procedure, thus the summoning order or the entire proceedings as drawn against the present applicant do not suffer from any apparent vices which calls for any interference in the exercise of its inherent powers under Section 482, thus the C482 Application lacks merit and the same is, accordingly, dismissed.

16. After having rendered the judgment, the learned counsel for the applicant has prayed for that he may be permitted to surrender before the Court concerned and if he does so, his bail application may be directed to be considered expeditiously. The said permission is accepted. If the applicant surrenders before the Court of Judicial Magistrate, Gopeshwar, District Chamoli, his bail application would be considered as expeditiously as possible.

(Sharad Kumar Sharma, J.)

20.09.2023