

HIGH COURT OF UTTARAKHAND
AT NAINITAL

C482 Application No. 1919 of 2023

Manju Kapoor

... Applicant

Vs.

State of Uttarakhand and others

... Respondents

Advocate: Mr. Amit Saxena, Advocate, for the applicant through video conferencing.
Mr. B.C. Joshi, AGA, for the State

Hon'ble Sharad Kumar Sharma, J.

The applicant to the present C482 Application has agitated his grievance as against the impugned order dated 06.09.2023, as it has been passed in Criminal Revision No. 126 of 2023, Siddhartha Batra and others Vs. State of Uttarakhand and others. The grievance of the applicant, first of all, it is as against an interlocutory order, whereby the Revisional Court, while entertaining the Revision as against allowing of an application under Section 156(3) of CrPC has granted an interim order, staying the effect and operation of the order dated 05.09.2023.

2. Primarily, the argument of the learned counsel for the applicants is on the basis of the judgment of the Hon'ble Apex Court, as rendered in **Criminal Appeal No. 330 of 2021, M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others**, whereby in those proceedings, the Hon'ble Apex Court was dealing with the interim order passed by the Division Bench of the High Court of Judicature at Bombay in Writ Petition (ST) No. 2306 of 2020, whereby the Court was scrutinizing the

interim order which was rendered in the said case to the following effect:

“no coercive measures shall be adopted”.

3. Learned counsel for the applicant, while referring to para 14 of the said judgment has contended that the Courts which are exercising their inherent powers either under Article 226 of the Constitution of India or 482 of the Code of Criminal Procedure, when they are granting interim order or even while exercising the revisional powers under Section 397 has had to assign reasons for granting the interim order and that is what has been attempted to be extracted from the contents of para 14, which is extracted hereunder:-

“14. A similar view has been expressed by this Court again in the case of Asian Resurfacing of Road Agency Private Limited (supra). By deprecating the interlocutory orders/stay of criminal proceedings by the High Courts, it is observed by this Court that the stay should not be considered as an incentive to cause delay in the proceedings. It is further observed that order granting stay or extending it must be a speaking order and stay not to operate long. It is further observed in the said decision that delay in a criminal trial has deleterious effect on the administration of justice in which the society has a vital interest; delay in trials affects the faith in Rule of Law and efficacy of the legal system; it affects social welfare and development; mere prima facie case is not enough; party seeking stay must be put to terms and stay should not be incentive to delay; the order granting stay must show application of mind; the power to grant stay is coupled with accountability. It is further observed that wherever stay is granted, a speaking order must be passed showing that the case was of an exceptional nature.”

4. The learned counsel for the applicant has pressed the C482 Application on two grounds that the impugned interim order is without assigning any reasons, secondly, it was on account of the influence exercised by the revisionist who is a sitting MLA.

5. First of all, as far as the arguments extended by the learned counsel for the applicant from the view point, that since the interim order was granted because the revisionist therein being a sitting MLA, is absolutely a preposterous argument extended by the learned counsel for the applicants because even being an elected members of legislative assembly, doesn't deprive a person to approach the Court for redressal of his or her grievance as against the impugned orders which are passed by the trial against him or her.

6. The expression of that the revisionist is a sitting MLA has been only attracted in his arguments to give colours to the C482 Application and particularly in order to have its persuasive value before this Court while giving a challenge to an interlocutory order.

7. Even otherwise also, in accordance with the provisions contained under Section 397 of CrPC, when the revisional jurisdiction is being exercised by the Court while scrutinise the final order passed on an application under Section 156(3) of CrPC, there is no restriction imposed on the revisional Court in considering and passing an order on an interlocutory application in a Revision.

8. The argument that the impugned order has not assigned any reason is too an argument not acceptable by this Court because the subject matter which was under consideration before the Hon'ble Apex Court in the matters of M/s Neeharika Infrastructure Pvt. Ltd. (*supra*) was a situation where the Division Bench of the High Court of

judicature of Bombay has only use the word “no coercive measures shall be adopted,”. Quite obviously and apparent too, this order doesn't reflect an application of mind.

9. But, so far as the impugned order is concerned, the Court has admitted the Revision and then has independently considered the reasons to justify grant of an interim order, because in the absence of which if the interim order is not granted, the consequential effect of allowing of the application under Section 156(3) of CrPC would be that the proceedings would stand initiated against the present applicant without even letting the order impugned being scrutinised by the revisional Court on judicial side in Criminal Revision No. 126 of 2023, Siddhartha Batra and others Vs. State of Uttarakhand and others.

10. Apart from it, if the impugned order itself is taken into consideration, the Court has observed and has taken into consideration various vitalities and aspect as to what bearing will it have in case if the interim order is not granted in the Revision and the principal order of allowing the application under Section 156(3) of CrPC is permitted to continue. The Court has observed that in case if the interim order is not granted, the very purpose of the filing of revision itself would stand frustrated and the said principal has been extracted by the learned Revisional Court on the basis of the judgment of this Court, almost which was rendered in an akin circumstances.

11. On reading the impugned order dated 06.09.2023 in its entirety, it cannot be said that it was an illogical order

having rendered without an application of mind. The Court has justified as to what was the circumstances under which there was a necessity to pass the impugned order for staying the effect and operation of the order allowing the application under Section 156(3) of CrPC. Because even otherwise also, when an application under Section 156(3) of CrPC has been preferred, the common principal is that where an interlocutory order is under challenged and if the effect of same is not stayed by the superior revisional or appellate Court and with efflux of time if there is a probability of the proceedings being rendered infructuous, the interim order is required to be granted in order to protect the lis and to survive the same to be decided on merits.

12. The aforesaid principle has been laid down by the judgment of Mool Chand Yadav and Another Vs. Raza Buland Sugar Company as reported in 1983 AWC 121 SC.

13. Apart from it, it has been a consistent view of the Hon'ble Apex Court that when a revision is admitted, there should be an interim order, which may protect the status of the lis and may not be rendered the lis infructuous. The said principle has been laid down by the Hon'ble Apex Court in a judgment as reported in **1996 ALR 99, Union of India Vs. Janki Mahto and others** as well as in the judgment **2009 (12) SCC 263, Hyderabad Metropolitan Water Supply and Swwerage Board and others Vs. P. Satyanarayana Rao and others**.

14. Since the interim order, which is under challenge in the present C482 Application is only protecting a lis to be

proceeded further on merits, it cannot be said that the impugned order passed by the 1st Additional Sessions Judge is without application of mind in order to attract the principle of M/s Neeharika Infrastructure Pvt. Ltd. (*supra*), because this C482 Application and the impugned order which is under challenge cannot be kept on the same pedestal on the subject which was under consideration before the Hon'ble Apex Court in the matters of M/s Neeharika Infrastructure Pvt. Ltd. (*supra*).

15. Thus, the tenacity of argument as extended by the learned counsel for the applicant is not acceptable by this Court. The C482 Application lacks merit and the same is, accordingly, dismissed.

(Sharad Kumar Sharma, J.)

03.10.2023

Mahinder/