

HIGH COURT OF UTTARAKHAND
AT NAINITAL

C482 Application No. 2101 of 2023

Neeraj Singh Adhikari

... Applicant

Vs.

State of Uttarakhand and Another

... Respondents

Advocate: Mr. Vinoda Nand Barthwal, Advocate, for the applicant through
video conferencing
Mr. Bhaskar Chandra Joshi, AGA, for the State

Hon'ble Sharad Kumar Sharma, J.

A very peculiar argument has been raised by the learned counsel for the applicant while putting a challenge to the proceedings of Complaint Case No. 1847 of 2023, Jeevan Vs. Neeraj Singh Adhikari, being the complaint proceedings drawn for the offences under Sections 504 and 506 of IPC.

2. **Firstly**, the learned counsel for the applicant has argued the matter that the complainant has not approached the Court with clean hands for the reason being that much prior to the registration of the complaint under Section 156(3) of CrPC on 04.03.2023, since the complainant has not disclosed the fact about the proceedings under Section 107 to be read with Section 116 of CrPC, it will amount that the respondent complainant had not approached the Court with clean hands.

3. **Secondly**, he argues that the complaint proceedings would be bad in the eyes of law, because initiation of the complaint proceedings, at a subsequent stage will amount to be a recurring proceedings for the same cause of action without disclosing the fact of institution of the earlier

proceedings under Section 107 to be read with Section 116 of CrPC.

4. **Thirdly**, the learned counsel for the applicant argues that initiation of the complaint proceedings on 04.03.2023 would attract the provisions contained under sub-Article (2) of Article 20 of the Constitution of India, on the pretext that nobody can be sentenced or prosecuted twice for the same offences.

5. As far as the initiation of the complaint proceedings are concerned, they were the proceedings which were drawn under Section 107 to be read with Section 116 of CrPC. Let us make it very clear at this juncture, that once the proceedings are contemplated to be drawn under the procedural criminal law, and it is not punitive in nature, rather reformatory. It's only for the purpose to ensure to maintain peace and tranquility. It's parlance could not be sought, in a complaint proceedings drawn under the penal provisions by invoking Section 156(3) of CrPC. Thus, invoking the provisions contained under Section 107/116 of CrPC, since it only intends to maintain peace and tranquility amongst the public for any wrongful or an overt act that may have occasioned resulting into a breach of peace or disturbing of public tranquility.

6. Widely speaking, Section 107 of CrPC is only for the purposes to ensure that the public at large, their peace is not breached, because of any untoward act and that is why any orders which are required based on the same were based upon the bonds, which are to be executed by the accused persons against whom the proceedings under

Section 107 to be read with Section 116 of CrPC have been drawn.

7. Apart from it, the provisions contained under Section 116 of CrPC, where it contains that a penal action could be taken against the person is only on an occasion when the person who is called upon to furnish a bond, fails to furnish that bond then only the penal provision comes into picture.

8. Thus, the procedural law of Section 107, which has to be read with Section 116 of CrPC cannot be read in parlance to the provisions contained under Sections 504 and 506 of IPC, for which the complaint has been drawn by the respondent before the competent Court, on which the cognizance have been taken because it's a penal action to be taken on a criminal act of an accused which is absolutely independent.

9. The argument, as extended by the learned counsel for the applicant with regard to the non-disclosure of the fact about the prior initiation of the proceedings under Section 107 to be read with Section 116 of CrPC, on which the report was submitted by the Sub Inspector (Annexure 3 to the C482 Application), in fact, this document its not an order under Section 107 or Section 116 of CrPC, but it is rather only a report which has been submitted by the Sub Inspector to the Sub Divisional Magistrate, thus the document which has been attempted to be read as if it was a positive action taken against the complainant under Section 107 and under Section 116 of CrPC has been misunderstood and misconstrued by the learned counsel for the applicant because action on the basis of a complaint

under Section 107 to be read with Section 116 of CrPC, was yet to be taken, based upon the report submitted by the Sub Inspector. Thus, non-disclosure of the said report, which is not a conclusive order under Section 107 to be read with Section 116 of CrPC, will have no bearing nor will it create any impediment, as such, in drawing the proceedings under Section 156 (3) of the CrPC.

10. Learned counsel for the applicant further argues that for the same nature of offences, a person cannot be penalized twice and for the said purposes, he reads a provision contained under sub-Article (2) of Article 20 of the Constitution of India.

11. To be precise, the provisions contained under sub-Article (2) of Article 20 of the Constitution of India, it speaks about that no person could be punished twice for the same offence. What is relevant herein is the word used **‘punished’** or **‘convicted’**. For the purposes to attract sub-Article (2) of Article 20 of the Constitution of India, a person cannot be **‘prosecuted and punished’** for the same offence more than once that would be a proposition which will not apply herein, almost for the similar answer as given to the second question because the proceedings under Section 107 to be read with Section 116 of CrPC, is not a prosecution but rather only precautionary in nature, not entailing a penal action as provided under the IPC and since it is only a socially reformatory provision, it cannot be kept at a common pedestal, as if it was a criminal proceedings drawn against the applicant in which, upon culmination of prosecution, there could be a possibility of punishment. Thus non-disclosure of the fact of the

proceedings as referred to by the learned counsel for the applicant (Annexure 3 to the C482 Application), first of all, since the same not being an order passed under Section 107 and Section 116 of CrPC, has got no relevance, since the said document being a simpliciter report submitted by the Sub Inspector it is only for the purposes of drawing of the proceedings for submitting the bond to assure to maintain peace and tranquility, which is not a prosecution nor it intends a punishment or any penal action and hence it will have no bearing in drawing the proceedings of the complaint case under Section 156(3) of CrPC.

12. In view of the aforesaid, the argument extended by the learned counsel for the applicant the same is not acceptable by this Court. The C482 Application is misconceived and the same is, accordingly, dismissed.

(Sharad Kumar Sharma, J.)

19.10.2023