



2024:UHC:8643

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc Application No. 486 of 2024

Chander Singh Bisht

.....Petitioner

Versus

State Of Uttarakhand and others

.....Respondents

Presence:-

Mr. Harshit Sanwal Advocate for the petitioner.

Mr. G.S. Sandhu, Additional Advocate General along with Ms. Mamta Joshi, Brief Holder for the State.

Dated : 20.11.2024

Hon'ble Vivek Bharti Sharma, J.

Present petition is filed by the petitioner for following reliefs:

- (i) *Direct the Officer(s) of court of learned Additional Chief Judicial Magistrate, Haldwani to place the original order dated 31.08.2024 passed in Misc. Criminal Case No.320/2024 (Annexure-10) on record, which has been replaced with the order dated 31.08.2024 (Annexure No.9); and/or*
- (ii) *Quash/set aside the subsequent order dated 31.08.2024 (Annexure No.9) being non est in the eyes of law and uphold the Electronic True Copy of the Order dated 31.08.2024 (Annexure No.10) passed in Misc. Criminal Case No. 320/2024 Chander Singh Bisht Vs. Anand Singh & Ors. passed by the learned Additional Chief Judicial Magistrate, Haldwani, Nainital; and/or*
- (iii) *Pass appropriate order directing the State i.e. P.S. Haldwani to act in accordance with the*



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original order dated 31.08.2024 (Annexure No.8 & 10) passed in Misc. Criminal Case No. 320/2024 and to proceed with registration of FIR and consequent investigation; and/or (iv) Quash/set aside the subsequent order dated 31.08.2024 (Annexure No.9) passed in Misc. Criminal Case No. 320/2024 Chander Singh Bisht Vs. Anand Singh & Ors. passed by learned Additional Chief Judicial Magistrate, Haldwani, Nainital; and/or allow the application under Section 156(3) Cr.P.C. moved by the applicant and direct for registration of FIR on the report dated 1.5.2024; 3.5.2024 and 10.5.2024.

2. He would further submit that the petitioner/complainant moved an application u/s 156(3) of Cr.P.C. (*the Criminal Procedure Code as then was*) in the court of Additional Chief Judicial Magistrate, Haldwani (*Annexure-5*) with prayer to get the offences committed by the private respondents investigated by Police by registering the FIR; that, this application is a detailed application duly supported by electronic and other evidences; that, the application was registered as Misc. Criminal Case No.320/2024 and the arguments of the petitioner/complainant were heard by the court on 08.08.2024 and the case was fixed for orders on 31.08.2024; that, on 31.08.2024 it was a Saturday and it was informed to the petitioner/complainant that the order would be passed during the course of the day and that the petitioner/complainant may enquire about the same on 02.09.2024.



3. He would further submit that on 02.09.2024 the petitioner/complainant checked the status of Misc. Criminal Case No.320/2024 and came to know that the application has been allowed; that, thereafter, he applied for certified copy of the order and in the meantime on 03.09.2024 he downloaded the e-true copy of the order dated 31.08.2024 from the official website (Annexure-10) at 03:21:49 pm. The operative portion of Annexure-10 is quoted hereunder:-

“आदेश

(i) प्रार्थी चन्द्र सिंह बिष्ट का प्रार्थना पत्र अंतर्गत धारा 156 (3) दण्ड प्रक्रिया संहिता, 1973 स्वीकार किया जाता है।

(ii) थाना हल्द्वानी, जिला नैनीताल, के भारसाधक अधिकारी को आदेशित किया जाता है कि प्रार्थी के प्रार्थना पत्र अंतर्गत धारा 156 (3) दण्ड प्रक्रिया संहिता, 1973 को लिखित तहरीर मानते हुए विधिवत् अभियोग पंजीकृत कर अन्वेषण कर अपनी पुलिस रिपोर्ट न्यायालय को प्रेषित करें।

(iii) कार्यालय के भारसाधक अधिकारी को आदेशित किया जाता है कि इस आदेश की एक प्रतिलिपि मय प्रार्थना पत्र अंतर्गत धारा 156 (3) दण्ड प्रक्रिया संहिता, 1973 की प्रतिलिपि, सम्बन्धित थाने के भारसाधक अधिकारी को नियमानुसार आवश्यक कार्यवाही हेतु प्रेषित करें। पत्रावली नियमानुसार दाखिल दफ्तर हो।”

4. He would further submit that on 03.09.2024 the petitioner/complainant obtained the certified copy of the order dated 31.08.2024 (Annexure-9) and to his utter surprise and astonishment he found that till para no.7 the order was identical to the e-true copy version of the order but subsequent paragraphs were completely changed and in the operative part of the order, the application is shown to be dismissed. He would refer to the operative portion of the order dated 31.08.2024 (Annexure-9), which is quoted hereunder:-



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“प्रार्थी का प्रार्थना पत्र अंतर्गत धारा 156 (3) दण्ड प्रक्रिया संहिता, 1973 खारिज किया जाता है। पत्रावली नियमानुसार दाखिल दफ्तर हो”

5. Learned counsel for the petitioner/complainant would submit that now the order dated 31.08.2024 (*Annexure-10*) as was initially reflected on the official website has been removed and replaced with the order *Annexure-9*.

7. In view of the submissions and facts raised by the learned counsel for the petitioner on the previous date of hearing, which were found serious and alarming, this Court vide order dated 12.11.2024 had issued show cause notices to the Additional Chief Judicial Magistrate, Haldwani, District Nainital.

8. In compliance of the same, the Additional Chief Judicial Magistrate, Haldwani, District Nainital submitted his reply dated 15.11.2024.

9. In his reply, the officer concerned stated that he had not signed the order of allowing the application under Section 156(3) Cr.P.C. on 31.08.2024 and it was because of the mistake of one Mr. Rakesh Kunwar, Data Entry Operator appointed through UPNL, who had inadvertently uploaded the previous order dictated to the Stenographer Smt. Sujata Upadhyaya; that this mistake came in the knowledge of the Mr. Rakesh Kunwar then the wrong order was removed from the website by him.

10. *Prima facie* this Court is not satisfied with the explanation submitted by the Additional Chief Judicial Magistrate, Haldwani, District Nainital as it is inexplicable how these alleged two complete orders with different conclusions were dictated by



Magistrate concerned on the application under Section 156(3) Cr.P.C. filed by the petitioner.

11. It is also pertinent to note that in both the orders, be it the order of rejecting the application or order of allowing the application under Section 156(3) Cr.P.C., paragraph nos. 2 to 8 are same except some minor changes in paragraph no. 3 in both the orders. In both the orders, the subsequent paragraphs to paragraph no.8 are completely changed and even the conclusion is totally different.

12. It is trite that the decision on the application under Section 156(3) Cr.P.C. does not involve the facts of the case as it is decided on an application and not on the evidence, testimony or proved/admitted documents as a final judgment.

13. In view of the above observation, this Court is of the considered view that the matter requires a detail enquiry by the Registrar (Vigilance) of this Court.

14. The Registrar (Vigilance) is directed to conduct detail enquiry in the matter and take into possession the relevant documents by placing the certified copies issued by the Copying Department of the concerned District Court in the record of the court concerned

15. As, this order is on the judicial side, therefore, the Registrar (Vigilance) shall place the copy of this order before the Hon'ble Administrative Judge/Hon'ble the Acting Chief Justice for information and kind perusal.

16. In so far as the present petition is



concerned, in view of the peculiar facts and circumstances of this case, this Court deem it just and proper to set aside both the orders dated 31.08.2024 (*Annexure-9 and Annexure-10*).

17. Accordingly, the Annexure-9 and Annexure-10 are set aside. The case is transferred to the court of learned Chief Judicial Magistrate, Haldwani, District Nainital, who will re-hear the application of the petitioner filed under Section 156(3) Cr.P.C. and pass appropriate order in accordance with law.

18. Subject to the above observations and directions, the writ petition stands disposed of.

(Vivek Bharti Sharma, J.)
20.11.2024

Mamta

Digitally signed by MAMTA RANI
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