



2024:UHC:8646

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc Application No. 613 of 2024

20 November, 2024

Tushar Lohani

--Petitioner

Versus

State of Uttarakhand and another

--Respondents

Presence:-

Mr. Tribhuwan Chandra Pandey, Advocate for the petitioner.

Mr. Pratiroop Pandey and Mr. Devender Singh, learned Assistant Government Advocate for the State/respondent no.1.

Mr. Sandeep Tiwari, learned counsel for respondent no.2 through V.C.

Hon'ble Vivek Bharti Sharma, J.(Oral)

This C528 petition is filed for quashing the impugned judgment and order dated 20.09.2024 passed by the learned District and Sessions Judge, Champawat in Criminal Revision No.23 of 2024 (*Annexure No.6 to the petition*) as well as order dated 18.06.2024 passed by the learned Judicial Magistrate, Tanakpur, District Champawat in Criminal Case No.900 of 2023 (*Annexure No.4 to the petition*) and further to quash the entire proceedings of Criminal Case No.900 of 2023 (*Case Crime No.148 of 2022*), 'State Vs. Tushar Lohani' under Sections 406, 506 of I.P.C. pending before the Court of learned Judicial Magistrate, Tanakpur, District Champawat.

2. Brief facts of the case are that respondent no.2/complainant lodged FIR No.148 of 2022 under



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Sections 406, 506 of I.P.C.(*as the Penal Code then was*) at Police Station Tanakpur, District Champawat (*Annexure No.1 to the petition*) against the petitioner/accused; that, vide order dated 18.06.2024, the Judicial Magistrate, Tanakpur, District Champawat disallowed the application for discharging the petitioner/accused and he was directed to appear for framing of the charges under Section 406, 506 of I.P.C. on 19.07.2024.

3. Counsel for the petitioner/accused would submit that necessary ingredients of the offence as defined under Section 406 of I.P.C. are not made out from the evidences placed along with the charge sheet, therefore, revision was filed in the court of District and Sessions Judge Champawat; that, the District and Sessions Judge Champawat by the impugned order dated 20.09.2024 dismissed the revision of the petitioner /accused, hence, this petition has been filed.

4. Counsel for the petitioner/accused would rely upon the judgments as quoted in the judgment of the Trial Court on the point of entrustment and would submit that petitioner /accused has taken ₹35,22,132/-, however, respondent no.2/complainant alleges that a total amount of ₹39,95,200/- has been given to the petitioner/accused.

5. The allegations in the FIR are that the



petitioner/accused took this money by stating that he has contacts in a Housing Society in Delhi and, therefore, he can purchase a residential apartment by exercising his influence. The petitioner /accused claimed that he would get an apartment for respondent no.2/complainant at a very low price and would secure admission for the son of respondent no.2/complainant in the Guru Govind Singh Indrapratha University for which some admission charges are to be paid and, for this purpose, respondent no.2/complainant gave him ₹20,000/-. However, the petitioner/accused never got any residential apartment transferred in the name of respondent no.2/complainant.

6. The order of the Trial Court is very detailed order and it has considered all the aspects of the entrustment on which the charges against the accused have to be framed.

7. In the considered view of this Court at the time of framing charges the Court has only to see that whether any *prima facie* case is made out from the evidences placed along with charge sheet against the accused or not. For this purpose, the Trial Court is not required to make detailed inquiry into all the aspects as it is done at the time of passing final judgment.

8. The allegation of entrustment of amount to the



petitioner/accused is present in the FIR itself and the petitioner /accused himself admits that he has taken ₹35,22,132/- albeit not for purchasing house for respondent no.2/ complainant but for the purpose of marriage of the daughter of respondent no.2/complainant. All these facts are matter of evidence which cannot be considered at the time of framing of charges. The Trial Court is not supposed to make inquiry about possible defence of accused at the time of framing of charges. The judgment of the Trial Court and the Revisional Court of District and Sessions Judge, Champawat is correct in facts and law. Therefore, there is no force in this petition.

9. It is trite that the powers under Section 528 BNSS have to be exercised sparingly, carefully and with caution and only to prevent abuse of process of any Court or otherwise to secure ends of justice. In view of this Court, this is not the fit case where the powers u/s 528 BNSS should be exercised.

10. In view of the above, this Court is not inclined to interfere in the impugned orders. Accordingly, present C528 petition lacks merits and the same is hereby dismissed *in limine*.

11. From perusal of the order of the Trial Court, it is evident that on 18.06.2024, the application for



It is observed that in many cases as a matter of practice whenever an application for discharge is made by an accused and the same is disallowed, the next date for framing of charges is fixed, even if accused is present before the Court.

In the considered view of this Court when the Trial Court has considered all the facts and law at the time of hearing on the application for discharge and passes order rejecting it, then the charges can be framed on the same day. Fixing the date for this purpose is an unnecessary wastage of time and delays the trial. Therefore, all the Trial Courts of the State are directed to secure the presence of the accused and to frame charges on the same day when application for discharge is disallowed.

12. Let a copy of this judgment be circulated to all the Trial Courts of the State for compliance.

(Vivek Bharti Sharma, J.)
20.11.2024

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SUKHBANT SINGH

Digitally signed by SUKHBANT SINGH
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