

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc Application No.786 of 2024

13 November, 2024

Smt. Sarvesh

--Petitioner

Versus

State of Uttarakhand and others

--Respondents

Presence:-

Mr. Deepak Sharma, Advocate for the petitioner through V.C.

Mr. G.S. Sandhu, learned Additional Advocate General along with

Mrs. Mamta Joshi, learned Brief Holder for the State.

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

This C528 petition is filed for quashing the impugned judgment and order dated 01.06.2024 passed by the learned 1st Additional District & Sessions Judge, Haridwar (*Annexure No.9 to the petition*) in Criminal Appeal No.35 of 2023, 'Smt. Sarvesh Vs. State of Uttarakhand and others', as well as the impugned judgment and order dated 20.02.2023 (*Annexure No.6 to the petition*) passed by 2nd Judicial Magistrate, Haridwar (*wrongly written as 3rd Judicial Magistrate in the petition*) in Misc. Case No.02 of 2021, 'Smt. Sarvesh Vs. Pritam and others', under Section 12 of Protection of Women from Domestic Violence Act, 2005.

2. Brief facts of the case are that the petitioner/complainant filed a Misc. Case No.02 of 2021,

‘*Smt. Sarvesh Vs. Pritam and others*’ under Section 12 of the Protection of Women from Domestic Violence Act, 2005 before the Court of learned 2nd Judicial Magistrate, Haridwar for right to residence in her matrimonial house along with interim relief application, which was dismissed vide order dated 20.02.2023 (*Annexure No.6 to the petition*).

3. Being aggrieved by the said order, the petitioner/complainant preferred Criminal Appeal No.35 of 2023, ‘*Smt. Sarvesh Vs. State of Uttarakhand and others*’ before the learned 1st Additional District & Sessions Judge, Haridwar which was also dismissed vide order dated 01.06.2024 (*Annexure No.9 to the petition*).

4. Counsel for the petitioner/complainant would submit that the Appellate Court illegally and arbitrarily dismissed the appeal without application of mind; that, it has been wrongly stated by the respondents before the Courts below that 5 bigha agricultural land and a house at Sherpur near Nagla Khurja has been given to the petitioner/ complainant in the ancestral property; that, the impugned judgments and orders passed by both the Courts below are wholly arbitrary and whimsical.

5. Counsel for the State drawn the attention of this Court to paragraph no.9 of the order dated 20.02.2023 passed by the Trial Court wherein the Trial Court in its finding observed that the

petitioner/complainant has already been given her share of property and the miscellaneous case was filed by the petitioner/complainant just after rejection of her case regarding land dispute, hence, it seems to be a property dispute.

6. Counsel for the State would submit that vide its judgment dated 01.06.2024 (*Annexure No.9 to the petition*) the Appellate Court also affirmed order dated 20.02.2023 passed by the Trial Court; that, the appellate Court also observed in its finding while affirming order dated 20.02.2023 that the petitioner/complainant has already been given her share of property by respondent nos.2 and 3 and nowhere this fact has been denied by the petitioner /complainant rather she has concealed it in her application, therefore, the petitioner/complainant has no ground to claim any interim maintenance and right to reside in the impugned property. Counsel for the State would further submit that grounds taken in petition are frivolous and an attempt to mislead the process of law, therefore, this petition may be dismissed.

7. Perused the record in the light of submissions made hereinabove.

8. The ground taken by counsel for the petitioner that the respondents have wrongly stated before the Trial Court that 5 bigha agricultural land and a house at Sherpur near Nagla Khurja has been given to the

petitioner/complainant in the ancestral property was also available with the petitioner/complainant in the earlier round of litigation, which has ended with the rejection of C482 No.785/2018 by the Co-ordinate Bench of this Court vide its order dated 17.12.2020 (*Annexure No.4 to the petition*) after compromise between the parties. Again this ground was available in this round of litigation before the Trial Court and the Appellate Court but the petitioner/complainant did not take this plea earlier rather concealed this fact and now in this C482 petition before the High Court this plea has been raised for the first time, which cannot be allowed at this stage. This seems to be an attempt to mislead the courts by not disclosing the material facts fairly and truly.

9. Even the copy of the plaint filed by the petitioner/complainant as *Annexure No.5* is neither the certified copy nor photocopy of the certified copy and seems as if it has been received by photostating the judicial file. On query of the Court, counsel for the petitioner/complainant could not explain how come the petitioner/complainant got this copy which is filed as Annexure No.5. Last but not the least, this C528 petition has been filed after more than five months of the order passed by the Appellate Court, which also shows that this petition has been filed just to delay the process of law.

10. In the considered opinion of this Court, the impugned orders passed by both the Courts below are well reasoned and this Court does not find any perversity or illegality in the order passed by the Trial Court as well as by the Appellate Court affirming the order of the Trial Court.

11. Having considered the submissions and after going through the record available on file, this Court is of the considered view that it is not a fit case, in which, the High Court should invoke its inherent jurisdiction under Section 528 of BNSS, which otherwise neither smacks any malice nor is contrary to the provisions contained under the Code of Criminal Procedure.

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

(Vivek Bharti Sharma, J.)
13.11.2024

SS

SUKHBANT SINGH

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