



2024:UHC:8768

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc Application No. 865 of 2024

Gurcharan Singh

.....Petitioner

Versus

State Of Uttarakhand and another

.....Respondents

Presence:-

Mr. Suresh Chandra Bhatt, counsel for the petitioner.

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

Dated: 26.11.2024

Hon'ble Vivek Bharti Sharma, J.

This petition is filed by the petitioner for direction to the District/Sessions Judge, Dehradun to expedite the Criminal Appeal No. 88 of 2024 '*Pravesh Pal Vs. Gurcharan Singh & another*' pending in the court of 5th Additional District & Sessions Judge, Dehradun.

2. Counsel for the petitioner would submit that the respondent no.2/accused had made a deal with the petitioner to sell his house for ₹ 30 lacs; that, a sale contract was executed between the petitioner and respondent no.2/accused; that, the petitioner had paid ₹ 19,50,000/- to the respondent no.2/accused as advance amount; that, the petitioner also gave ₹1,06,500/- to the respondent no.2, thereafter, the said deal was cancelled by respondent no.2/accused; that; the total amount of ₹20,56,500/- is due against the respondent no.2; that,



the respondent no.2/accused gave three cheques of the total amount of ₹20,56,500/- to the petitioner with the promise and assurance that the said cheques will be cashed as and when the petitioner presents the same in the bank; that, the petitioner presented the said three cheques before the concerned bank on the due date but the same were dishonoured by the bank with the remark '*insufficient funds*'; that, the petitioner sent legal notice to the respondent no.2/accused through his counsel; that, the respondent no.2/accused gave reply to the said notice but the amount has not been paid by the respondent no.2/accused.

3. Counsel for the petitioner would further submit that the petitioner filed criminal complaint as Criminal Case No. 6078 of 2019 under Section 138 of the Negotiable Instruments Act, 1881 (*in short 'the N.I. Act*) against the respondent no.2/accused; that, learned Additional Chief Judicial Magistrate/VIth Additional Civil Judge (S.D.), Dehradun vide judgment and order dated 01.03.2024 convicted and sentenced the respondent no.2/accused to two years of simple imprisonment and had directed him to pay the amount of fine of ₹26,35,000/- as compensation within a period of two months from the date of the judgment; that, being aggrieved by the same, the respondent no.2/accused



filed a Criminal Appeal No. 88 of 2024, on which, the court of learned District & Sessions Judge, Dehradun vide order dated 28.03.2024 has suspended the effect of the sentence given to the respondent no.2/accused on the condition that he will deposit 05% of the compensation amount in the court within 60 days.

4. Counsel for the petitioner would further submit that when the respondent no.2/accused has not paid the amount of the compensation to the petitioner as directed by the trial court as well as Appellate Court, thereafter, the petitioner filed an application on 22.07.2024 before the Appellate Court with the prayer that the recovery warrant be issued against the respondent no.2/accused as he has not complied with the orders of trial court as well as the appellate court.

5. He would further submit that on 16.08.2024, the Vth Additional Sessions Judge was fixed the date for 18.09.2024 and on that day, the further date was fixed for 23.10.2024 but on that day the court was vacant, therefore, the appeal of the petitioner has not been decided as yet, thus, he prayed that this Court may give direction to the court concerned to decide the appeal of the petitioner expeditiously.

6. On the other hand, State counsel would vehemently oppose the submissions of the counsel for



the petitioner on the ground that if the petitioner is aggrieved that the case of the petitioner is not decided for the reason that the court concerned is vacant, then an equally efficacious remedy is available to the petitioner to file the an application under Section 449 B.N.S.S. before the District Judge of the court concerned for transfer of his case to the other criminal court. State counsel would further submit that that the Hon'ble Supreme Court in catena of judgment has held that the High Court cannot issue directions to the district judiciary in a routine manner for expeditious disposal of cases as the same would cause unnecessary pressure on the District Judiciary; that, the petitioner could not make out any strong ground for issuing directions to the court concerned for expeditious disposal of the appeal, therefore, the petitioner is not entitled for any relief at this stage.

7. Perused the record in the light of above submissions made by counsel for the parties.

8. Perusal of the order sheet of the court concerned annexed with the petition would substantiate the submission of the State counsel that the application under Section 449 B.N.S.S. has not been moved by the petitioner before approaching this Court for expedite disposal of the appeal. This Court cannot be oblivious of



the fact that there is huge pendency of backlog cases in the trial courts and any direction for expeditious disposal will further overburden the courts below. By issuing direction for expeditious disposal, one case cannot be prioritized over others.

9. Hon'ble Supreme Court in re **"M. Gopalakrishnan and others vs. Pasumpon Muthuramalingam and another (2022) SCC Online SC 1968"** has observed as follows:-

"..... ordinarily, before passing any such order for expeditious proceedings in a particular case (which might appear to be rather of innocuous nature), it would be appropriate for the higher Court to appreciate that any such order for one case, without cogent and extremely compelling reasons, might upset the calendar and schedule of the subordinate Court; might result in assigning an unwarranted priority to that particular case over and above other cases pending in that Court; and progression of such other cases might suffer for no reason and none of the faults of the litigants involved therein."

10. Recently also, a Constitution Bench of Hon'ble Supreme Court in re **"High Court Bar Association, Allahabad vs. State of U.P. & Ors."** in **Criminal Appeal No.3589 of 2023** with **Special Leave Petition (Crl.) nos.13284-13289 of 2023** and **Criminal Appeal"**, has observed that:-

"Constitutional Courts, in the ordinary course, should refrain from fixing a time bound schedule for the disposal of cases pending before any other Courts. Constitutional Courts may issue directions for the



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time-bound disposal of cases only in exceptional circumstances. The issue of prioritizing the disposal of cases should be best left to the decision of the concerned Courts where the cases are pending”.

11. In the light of aforesaid, this Court refrains itself from issuing any direction to the court concerned for expeditious disposal of the case in a time bound manner.

12. However, petitioner is permitted to move an application under Section 449 B.N.S.S. before the concerned District and Sessions Judge for transferring his case in another court and the court concerned shall make every possible endeavour to decide the proceedings at the earliest without any undue delay in accordance with law.

13. With the above observations and directions, the petition stands disposed of.

(Vivek Bharti Sharma, J.)

26.11.2024

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