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HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc Application No. 623 of 2025

13 May, 2025

Satish Chandra Joshi

--Petitioner

Versus

Sheetal Joshi

--Respondent

Presence:-

Mr. Akshay Joshi, Advocate for the petitioner.

Hon'ble Vivek Bharti Sharma, J.

This criminal miscellaneous application under Section 528 of B.N.S.S. has been filed with a prayer to direct the learned Judicial Magistrate, District Pithoragarh to expedite the proceedings of Criminal Case No.3161 of 2022, "*Satish Chandra Joshi Vs. Sheetal Joshi*" under Section 138 of the Negotiable Instrument Act, 1881, pending in the Court of learned Judicial Magistrate, District Pithoragarh and to decide the same within stipulated time bound period as fixed by this Hon'ble Court.

2. Learned counsel for the petitioner/complainant would submit that the petitioner/complainant filed criminal complaint Case No.3161 of 2022 on 08.12.2022 before the Court of the learned Chief Judicial Magistrate, District Pithoragarh, under Section 138 of the Negotiable Instruments Act, 1881, seeking recovery of the total cheque amount of ₹35,00,000/- (*Cheque No.722 965*) from the respondent; that, the learned Magistrate initially fixed the matter for recording the complainant's statement, and thereafter, vide order dated 02.03.2023, summoned the respondent to appear before the Court; that, on 27.03.2023, the respondent/accused appeared before the Court



for the first time; that, after conclusion of the complainant's evidence, the statement of the respondent/accused under Section 313 Cr.P.C. was recorded on 22.04.2024; that, thereafter about 20 dates had been given to the respondent/accused for recording evidence and, out of these 20 dates, on 18 dates adjournment were sought by and given to the respondent/accused. Despite that, no effective hearing could take place on many dates and the case is yet pending consideration. Hence, this petition is filed for direction to the concerned Magistrate to decide the aforesaid complaint case expeditiously.

3. Heard learned counsel for the petitioner/complainant and perused the record in view of the above submissions.

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

5. 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."

6. Recently also, a Constitution Bench of Hon'ble Supreme Court in re ***"High Court Bar Association, Allahabad vs. State of***



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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 timebound schedule for the disposal of cases pending before any other Courts. Constitutional Courts may issue directions for the 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”.

7. In the light of the above, it is trite that power under Section 528 BNSS has 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. However, in special and peculiar facts and circumstances, where it is evident on the face of record that there has been laxity on the part of respondent/accused to adduce evidence and Trial Court is also not discharging its judicial duty to make respondent/accused to produce evidence then instructions should be issued.

8. This is such a case, in which direction to conclude trial is necessary. The statement of accused U/s 313 of Cr.P.C. was recorded on 22.04.2024 and thereafter, 20 adjournment have been sought by and given to the respondent/accused for recording the evidence, despite all these opportunities, the defense evidence could not be concluded, therefore, this is the fit case where powers u/s 528 BNSS should be exercised.



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9. In view of the above, present criminal misc. application filed under Section 528 of Bhartiya Nagarik Suraksha Sanhita (B.N.S.S.) is disposed of with a direction to the Trial Court to expedite the proceedings of Criminal Case No.3161 of 2022, “*Satish Chandra Joshi Vs. Sheetal Joshi*” under Section 138 of the Negotiable Instruments Act, 1881, pending in the Court of learned Judicial Magistrate, District Pithoragarh and to decide the same as expeditiously as possible preferably within three months from the date of receipt of a certified copy of this order.

10. A copy of this order be sent to the Trial Court concerned for the needful.

(Vivek Bharti Sharma, J.)
13.05.2025

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