

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application No. 985 of 2017

Nanda Ballabh Bhatt

.....Applicant

Versus

State of Uttarakhand and Another

.....Respondents

Present:-

Mr. R.S. Sammal and Mr. P.S. Rawat, Advocates for the petitioner.

Mr. Pankaj Joshi, A.G.A. for the State.

Mr. Vipul Sharma, Advocate for the respondent no.2.

JUDGMENT

Hon'ble Ravindra Maithani, J. (Oral)

The challenge in this petition is made to the summoning order dated 22.07.2017, passed in Misc. Criminal Case No.57 of 2017, State of Uttarakhand v. Nanda Ballabh Bhatt ("the case"), by the court of Chief Judicial Magistrate, Pithoragarh.

2. Heard learned counsel for the parties and perused the record.

3. Briefly stated, the history of this case originates from a very small issue, which has now reached up to his Court. With regard to release of vehicles detained by the police, the court of Chief Judicial Magistrate, Pithoragarh, directed the Station House Officer ("the SHO"), Police Station Kotwali, District Pithoragarh, to produce the records. The petitioner was the SHO at Police Station Kotwali, District Pithoragarh, at the relevant time. On 14.07.2017, the petitioner was further directed to file an affidavit by appearing personally before the court on 17.07.2017. The petitioner did not appear before the court and informed the court that he had to appear before the High Court for filing a counter affidavit. Again, the petitioner was required to appear personally before the court on 20.07.2017. He appeared, but did not submit any affidavit, as required. In the case, the Court observed that since the petitioner did not file any affidavit, it amounts to an offence

under Section 178 IPC, for which a person may be detained into custody under Section 345 of the Code of Criminal Procedure, 1973 ("the Code"). Thereafter, on 21.07.2017, the proceedings of the case were initiated under Section 345 of the Code, and on 22.07.2017, a summon was issued to him.

4. It may be noted that though summoning order dated 22.07.2017 has been challenged, but, during the course of arguments, today, it is brought to the notice of the Court that the summoning order is dated 21.07.2017, which has been passed in the case, and that order has been filed along with the supplementary affidavit dated 04.12.2022 by the petitioner.

5. Learned counsel for the petitioner submits that the petitioner has not committed any offence at all.

6. Learned counsel for the respondent no.2 submits that offence is made out.

7. Learned State Counsel submits that the petitioner has not committed any offence.

8. A police officer was required by the court to file an affidavit, which he did not file. Therefore, the court observed that offence under Section 178 IPC has been made out, and enquiry under Section 345 of the Code was initiated on some other date, i.e. on 21.07.2017.

9. Section 178 IPC provides punishment when some person refuses oath or affirmation when duly required by public servant to make it. It reads as follows:-

"178. Refusing oath or affirmation when duly required by public servant to make it.—Whoever refuses to bind himself by an oath or affirmation to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

10. Apparently, in the instant case, the petitioner did not refuse to bind himself by an oath or affirmation. He has not filed affidavit. Non filing of affidavit may not attract the provisions of Section 178 IPC. This is one aspect of the matter. The proceedings of the case were initiated on 21.07.2017. The impugned order does not reflect that the petitioner was present in the court on that date.

11. Enquiry under Section 345 of the Code is conducted when offence is committed in presence or in view of the court. It reads as follows:-

“345. Procedure in certain cases of contempt.—(1)

When any such offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of any Civil, Criminal, or Revenue Court, the Court may cause the offender to be detained in custody, and may, at any time before the rising of the Court or the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to fine not exceeding two hundred rupees, and, in default of payment of fine, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

(2) In every such case the Court shall record the fact constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

(3) If the offence is under section 228 of the Indian Penal Code (45 of 1860), the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.”

12. Admittedly, on 21.07.2017, the petitioner was not present before the court. He did not refuse to bind himself from oath or affirmation. The petitioner had not filed affidavit on 20.07.2017, as required by the court. Therefore, if any offence was committed, it was not committed on 21.07.2017 in view or presence of the court. Therefore, the enquiry conducted under Section 345 of the Code also could not have been initiated on that date.

13. Therefore, this Court concludes that the facts, as narrated in the impugned order dated 21.07.2017, passed in the case, does not make out an offence under Section 178 IPC, and if any offence is committed, it was not committed in view and presence of the

court. Therefore, the enquiry, under Section 345 of the Code also could not have been initiated.

14. Having considered, this Court is of the view that under these facts and circumstances, no offence under Section 178 IPC is made out. Therefore, the impugned summoning order dated 21.07.2017, passed by the court in the case, is not in accordance with law. It deserves to be set aside.

15. The summoning order dated 21.07.2017, passed by the court in the case, is hereby quashed.

16. Accordingly, the petition is allowed.

(Ravindra Maithani, J)
24.04.2026

Ravi Bisht