

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application No. 638 of 2014

Vinod Uniyal Petitioner

Vs.

State of Uttarakhand and another Respondents

Present: Mr. R. P. Nautiyal, Senior Advocate for the petitioner.
Mr. P. C. Bisht, Brief Holder for the State of Uttarakhand.

JUDGMENT

Hon'ble Ravindra Maithani, J.(Oral)

Instant petition under Section 482 of the Code of Criminal Procedure, 1973 (for short "the Code") seeks quashing of an order dated 19.12.2013, passed in Criminal Case No. 2325 of 2008, State vs. Uttam Singh and another by the Court of Chief Judicial Magistrate, Tehri Garhwal (for short "the case") as well as order dated 10.06.2014 passed in Criminal Revision No. 6 of 2014, Vinod Uniyal vs. State, by the Court of Additional District and Sessions Judge, Tehri Garhwal (for short "the revision").

2. Heard learned counsel for the parties through video conferencing.

3. Facts, necessary for disposal of the instant case briefly stated, are that an FIR was lodged against the petitioner and others under Sections 409, 420, 467, 468, 471 and 120-B IPC at Police Station Kotwali, New Tehri. According to the FIR, the petitioner was chairperson of *Prathmik Shikshak Vetanbhogi Sahkari Samiti Ltd.*

("the *samiti*"). He along with other accused embezzled total Rs.61 Lakh. After investigation charge-sheet was submitted against co-accused and the proceeding of the case were instituted. In the case on 18.12.2019, at the stage of final arguments, an application under Section 319 of the Code was moved by the prosecution with the averments that the statement of PW1 Surendra Singh Bhandari and PW17 Kunwar Singh Bisht as well as other statements of witnesses and documents make out a *prima facie* case against the petitioner. The application under Section 319 of the Code was allowed by the Court in the case on 19.12.2013 and petitioner was summoned. This order dated 19.12.2013 were challenged in the revision which was also dismissed on 12.06.2014. Both these orders are impugned here in this petition.

4. Learned counsel for the petitioner would submit that in all forty one cheques were issued by the *samiti* out of which the petitioner signed only on two cheques which were issued in the name of Sushila Mewar and Balendra, the loan was disbursed and it was repaid also. It is the case of the prosecution that the cheques issued in the name of Sushila Mewar and Balendra were encashed by Suri Bharti and Balak Ram respectively, but, both have been acquitted in the appeal.

5. It is argued that, in fact, by the impugned order dated 19.12.2013, no cognizance has been taken against the petitioner. His file has simply been directed to be separated from the case. Apart

from it, it is also argued that against Suri Bharti and Balak Ram charge-sheet was not submitted under Section 409 IPC, therefore, there is no question of summoning the petitioner under Section 409 IPC.

6. On the other hand, Learned State counsel would submit that during the investigation the statement of the witnesses have revealed the *prima facie* case against the petitioner; therefore, the orders under challenge do not require any interference.

7. This is a petition which challenges order passed under Section 319 of the Code. Section 319 of the Code reads as hereunder:-

319. Power to proceed against other persons appearing to be guilty of offence. (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under subsection (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

8. A bare perusal reveals that just if it appears from the evidence that any other person, who is not accused could be tied along with the accused, the Court may proceed against such persons.

But, what should be the level of satisfaction when it should appear to the Court. There are no specific guidelines as such under Section 319 of the Code, but, in the case of Hardeep Singh vs. State of Punjab and others 2014 (3) SCC 92, the Hon'ble Supreme Court answered the questions in para 106 and according to it "the test that has to be applied is one which is more than *prima facie* case as exercised at the time of framing of charge, but, sort of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction".

9. This Court is also cautious that the petitioner has been summoned at the fake end of the trial in the case. In fact, the trial of the co-accused has terminated and appeal against the judgment of the trial court has also been decided.

10. The learned trial court read statements of two witnesses PW1 Suresh Singh Bhandari, who enquired the matter and stated that in his enquiry he found a *prima facie* case against the petitioner also. Statement of PW17 Kunwar Singh Bisht, the Investigating Officer has also relied on by the trial court. In fact, statements of these two witnesses have also been referred to conclude that the petitioner had signed two cheques.

11. Now, the question is that if the petitioner has signed two cheques, what difference does it make? Has he encashed the money and used it for his own use? Has he delivered those cheques to the persons who were not entitled to it? Or whether the persons

whose cheques were signed were not entitled for the loan? These and related questions would answer as to whether any prima facie case is made out or not. In all forty one cheques were issued by the *samiti*, but, out of them on 39 the signatures of the petitioner were forged. It has been categorically stated by the Investigating Officer PW17 Kunwar Singh Bisht in his statement that two cheques which, the petitioner signed, were in the name of Balendra and Sushila Mewar, both were teachers. They were not non existent persons. In fact, learned trial court in its judgment at para 61 recorded that Balendra was a person who was in the “*samiti*” it implies that the cheques were issued in the name of persons, in existence who were members of the society. It is not the case that those persons had not applied for the loan or any other person had applied for the loan on their behalf. The impugned order does not reveal it, even any evidence has also not been referred to indicate it. The loan which was given in the name of Balendra and Sushila Mewar had been deposited. Who deposited it, there are diverse versions on this aspect. In fact, the Court does not want to observe about the case of Suri Bharti and Balak Ram. PW17 Kunwar Singh Bisht the Investigating Officer has in page 11 para 2 of his statement, stated that the cheques issued in the name of Balendra and Sushila were given by Secretary Uttam Singh Negi to Balak Ram and Suri Bharti and he did so in conspiracy with bank officers.

12. Now, the question is that the cheques were issued in the name of the persons in existence, who were teachers also. The cheques were delivered by a person named Uttam Sing Negi to wrong

persons, in conspiracy with the bank officers. This is categorical statement of PW17 Kunwar Singh Bisht then, how is the petitioner involved in this case? How is the *prima facie* case? And, in fact, not only *prima facie* case, the satisfaction should be little higher than mere *prima facie* case, but, it is lacking in this case. Therefore, this Court is of the view that no *prima facie* case is made out to summon the petitioner under Section 319 of the Code. The learned courts below committed an error. Accordingly, the petition deserves to be allowed.

13. The petition is allowed.

14. Impugned orders dated 19.12.2013 passed in the case and 10.06.2014 passed in the revision are set-aside.

(Ravindra Maithani, J.)

29.09.2020

Pant/