



HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition Service Single No.1355 of 2012

12 August, 2026

Kamal Kumar Lunthi

--Petitioner

Versus

State Of Uttarakhand and Ors.

--Respondents

Presence:-

Mr. Parikshit Saini, learned counsel for petitioner.

*Mr. N.S. Pundir, learned D.A.G. for the State of Uttarakhand/
respondent Nos.1 to 4.*

Mr. Ajay Joshi, learned counsel for respondent No.5.

Hon'ble Pankaj Purohit, J. (Oral)

By means of the present writ petition, petitioner has challenged the impugned order dated 30.06.2011 passed by respondent No.2 (Annexure No.8 to the writ petition) as well as consequential order dated 09.09.2012 issued by respondent No.3 (Annexure No.9 to the writ petition).

2. The brief facts of the case are that, in the year 2010, petitioner was posted as Sub-Inspector In-charge, Lakhi Bagh Chowki, Police Station Kotwali Dehradun. On 25.05.2010, an FIR was lodged by Sanjay Mittal at Police Station Kotwali against Bharat Bhushan Gupta and Naveen Nagar, as Case Crime No.196 of 2010, u/s 323, 504 and 506 IPC, with certain allegations and the Station Officer marked the said FIR for investigation to the petitioner. After investigation, recording of the statement of victim, site visit, the case diary was prepared and accused-Bharat Bhushan Gupta and Naveen Nagar were arrested on 26.05.2010 and charge-sheet was submitted by the petitioner against them on 06.06.2010 and on 11.06.2010. Learned Chief Judicial Magistrate had taken the cognizance against the accused persons and thereafter issued summons against them. Respondent No.4-Bharat Bhushan Gupta moved a complaint on 05.06.2010 to respondent No.2 with certain allegations that Kailash Pawar (S.O.) and Ajay Singh (S.P.) were biased against him and his arrest was made by petitioner in unconstitutional manner. On the said complaint, respondent



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No.2 asked written reply from petitioner which was submitted by him on 15.07.2010 along with copy of Govt. Order dated 15.12.2006, whereby, it was specified that Section 506 IPC is cognizable and non-bailable. Respondent No.2 passed impugned order dated 30.06.2011 holding Section 506 IPC as non-cognizable and bailable, thus, according to respondent No.2, no arrest could be made without the order of court, and further passed an order that as the FIR was not lodged with correct version, thus, petitioner, who made the arrest, committed misconduct, for which a suitable action against the petitioner should be taken and directed the police authorities to take action and exonerated all other police officers. Thereafter, respondent No.3 pursuant to order dated 30.06.2011, issued a show cause notice against the petitioner on 07.09.2012, seeking reply within 15 days. Thus, petitioner is before this Court, challenging both the orders dated 30.06.2011 and 07.09.2012.

3. Learned counsel for petitioner submits that respondent No.2-State Police Complaint Authority, has no powers under the law as per the Police Act of 2007 to adjudicate upon the matter, which is under investigation or pending before the court as per the order impugned, whereupon number of findings relating to trial has been passed, which is completely illegal. He further submits that order impugned passed by respondent No.2 is completely illegal, as the petitioner was discharging his duties as given by Station Officer for doing investigation, thus, after recording of evidence, the accused was arrested, thus the order is per se illegal and thus, the consequential order is also illegal.

4. Learned counsel for petitioner contends that the "State Police Complaint Authority" is defined under Section 64 of the Police Act, wherein, authority consists of Chairperson and maximum four other members. However, in present case, impugned order dated 30.06.2011 was passed by Chairperson only and it did not bear signature of any other member. He further contends that whether the order has to be passed by Chairperson only or by Chairperson and Members together,



came up for consideration before this Court in the case of M/s Dasauni Vs. State of Uttarakhand, as reported in 2015 SCC OnLine Utt 2625, wherein, it has categorically held that the order passed by Chairperson only is *non est* in the eyes of law. Thus, he contends that Chairperson alone cannot pass an order under Chapter 8 of the Police Act of 2007.

5. Per contra, learned counsel for respondent No.4 submits that a first information report bearing FIR No.196 of 2010 was registered against respondent No.4 u/s 323, 504 and 506 IPC on 25.05.2010, which was investigated by petitioner. However, petitioner illegally arrested the respondent No.4 for the commission of alleged offences which are bailable and non-cognizable and on a mere allegation of commission of offences without investigating the genuineness of the complaint aggrieved with his illegal arrest, respondent No.4 approached the respondent No.2-State Police Complaints Authority, by filing a complaint against petitioner for committing serious misconduct under Section 74 of Uttarakhand Police Act, 2007 (hereinafter referred to as 'the Act of 2007').

6. He further submits that respondent No.4 was eventually acquitted of the trial initiated in connection with the aforesaid FIR, vide judgment and order dated 05.09.2017. It is contended by learned counsel for respondent No.4 that conjoint reading of Sections 64 and 65 of the Act of 2007 makes it clear that State Police Complaints Authority can have maximum five members and no minimum number of members is prescribed and there may be a case, where at a time, there is only one, two, three, four or five members in the Authority. It is further contended by him that when the Act of 2007 does not provide any quorum of Authority for conduct of its business or prescribe any minimum number of members in the Authority to hear the complaint, the argument of the petitioner that complaint ought to have been heard by the Authority consisting of five members is unsustainable.

7. Having heard the contentions of learned counsel for the parties and having gone through written submissions and



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case law supplied by them and after perusal of material available on record, particularly the instruction dated 25.07.2026 supplied by learned state counsel which was taken on record, clearly shows that on the date of passing of the impugned order the Police complaints authority had 5 working members including the Chairperson himself. The extract of letter dated 25.07.2026 is quoted below:-

“उत्तराखण्ड पुलिस अधिनियम 2007 यथा संशोधित 2018 की धारा 65 में उल्लिखित प्राविधानों के अनुसार राज्य पुलिस शिकायत प्राधिकरण में मा0 अध्यक्ष एवं अधिकतम चार मा0 सदस्यों की नियुक्ति का प्राविधान है तथा दिनांक 30.06.2011 को प्राधिकरण में निम्नवत मा0 अध्यक्ष एवं मा0 सदस्यगण नियुक्त थे:-

क्र०सं०	नाम	पद नाम	कार्यावधि	
			कब से	कब तक
1.	न्यायमूर्ति शम्भू नाथ श्रीवास्तव	मा0 अध्यक्ष	11-9-2008	10-09-2011
2.	श्री मदन सिंह (से०नि० आई०ए०एस०)	मा0 सदस्य	11-9-2008	10-09-2011
3.	श्री पी०के० जोशी (से०नि० आई०पी०एस०)	मा0 सदस्य	11-9-2008	10-09-2011
4.	से०नि० ब्रिगेडियर श्री वी०के० अग्रवाल	मा0 सदस्य	11-9-2008	10-09-2011
5.	डा० कुसुम नोटियाल	मा0 सदस्य	11-9-2008	10-09-2011

8. This Court is of the view that it is hard to fathom the reason as to why only the chairperson passed the impugned order. As per Section 64 and 65 of the Uttarakhand Police Act of 2007, there is no doubt that the State Police Complaint Authority consists of Chairperson and four other members and one of the independent members, the Chairperson shall be appointed by the State Government. Thus, in all five members shall be there including chairperson. For ready reference section 64 and 65 is quoted below:-

“64. State Police Complaints Authority:-

The State Government shall, within six months of the coming into effect of this Act, establish a State Police Complaints Authority (hereinafter referred to as the ‘Authority’), consisting of a Chairperson and maximum four other Members to inquire into public complaints against the police personnel for serious misconduct and to perform such other functions, as stipulated in this chapter.

65. Composition of the Authority.—

(1) The Authority shall consist of maximum five members, to be appointed by the State Government, with



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a credible record of integrity and commitment to human rights. The Authority shall consist of the following—

- (a) four persons of eminence with experience in public dealing and having credible record of integrity and commitment to human rights as independent members;
 - (b) a Police Officer superannuated in the rank not below the rank of Inspector General of Police.
- (2) At least one member of the Authority shall be a woman and not more than one member shall be a police officer.
- (3) Out of the four independent members, at least one member of the Authority shall be from amongst persons, having a good knowledge of law.
- (4) The State Government shall appoint one of the independent members, as Chairman of the Authority.”

9. Thus, the order passed by Chairperson alone cannot be said to be passed by the Authority. It is illegal *per se* and deserves to be quashed only on this sole ground. The argument of learned counsel for respondent No.4 regarding the fact that there is no quorum specified for functioning of the police complaints authority also holds no water as then what is the use of appointing 5 members in the complaints authority. This finding of the court is also supported by the case of **M/s Dasauni (Supra)**, wherein, it has been categorically held by a co-ordinate bench of this court that when there are multiple members in the police complaints authority the order passed by Chairperson only is *non est* in the eyes of law.

10. In view of the above, the writ petition is allowed. Accordingly, impugned order dated 30.06.2011 passed by respondent No.2 (Annexure No.8 to the writ petition) as well as consequential order dated 09.09.2012 issued by respondent No.3 (Annexure No.9 to the writ petition), are hereby set aside.

(Pankaj Purohit, J.)

12.08.2026

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