

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Writ Petition (PIL) No. 78 of 2020**

Umesh Kumar

...Petitioner

Vs.

State of Uttarakhand and others

...Respondents

Mr. Gopal K. Verma, learned counsel for the petitioner.

Mr. Paresh Tripathi, learned Chief Standing Counsel assisted by Mr. C.S. Rawat, learned Additional Chief Standing Counsel, Mr. Anil K. Bisht, learned Standing Counsel and Mr. Suyash Pant and Mr. S.S. Chaudhary, learned Brief Holders for the State of Uttarakhand.

Mr. V.K. Kapruwan, learned Standing Counsel for the Union of India-fifth respondent.

**Hon'ble Ramesh Ranganathan, C.J.**

**Hon'ble Ramesh Chandra Khulbe, J.**

Admit.

2. Mr. Paresh Tripathi, learned Chief Standing Counsel for the State Government takes notice on behalf of respondents 1 to 3.

3. Mr. V.K. Kapruwan, learned Standing Counsel takes notice on behalf of the Union of India-fifth respondent.

4. Mr. Gopal K. Verma, learned counsel for the petitioner, is permitted to take out notice on the fourth respondent by registered post acknowledgement due, and to file proof of service within three weeks.

5. The allegations in the Writ Petition are that, despite a notice having been affixed on his house on 20.05.2020, stating that due to reasons of security the residents of the subject house should be home-quarantined for 14 days from 20.05.2020 to 03.06.2020, the fourth respondent had participated in the Cabinet Meetings held both on 21.05.2020 and 29.05.2020, (wherein the Chief Minister, other Cabinet Ministers, and several Secretaries of various Departments were present), without informing and disclosing that his wife had tested COVID-19 positive; FIRs have been registered in different

Police Stations in district Haridwar and Uttarkashi under Sections 188 and 307 IPC, against common citizens for similar violations; though the law applies uniformly to all, and the fourth respondent is not above the law, no action has been taken so far to lodge a similar FIR against the fourth respondent; and the official respondents should be directed to take action against him since, by his act of participating in the Cabinet Meetings, the fourth respondent has violated the directions of the District Magistrate and the Chief Medical Officer, Dehradun as referred to in the said notice affixed at his residence on 20.05.2020.

6. Mr. Paresh Tripathi, learned Chief Standing Counsel for the State of Uttarakhand, while questioning the bonafides of the petitioner and his previous conduct, would submit that, when the notice was affixed outside his residence on 20.05.2020, the fourth respondent was not found COVID-19 positive. When we asked him who in that house was found COVID-19 positive, learned Chief Standing Counsel would submit that it is the fourth respondent's wife who was found COVID-19 positive resulting in such a notice being affixed outside the residence of the fourth respondent.

7. As the Cabinet Meetings were, admittedly, held in Dehradun it is evident that the fourth respondent was also present in Dehradun. While the learned Chief Standing Counsel states that it is possible that the fourth respondent may not have resided in that house during the lockdown period, these facts can only be ascertained on the fourth respondent being put on notice, and his filing a counter-affidavit presenting his version of these incidents.

8. The FIRs placed on record are for offences under Section 188 and 307 IPC. Sections 188 and 307 IPC read as under:-

**“188. Disobedience to order duly promulgate by public servant-** Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain

act, or to take certain order with certain property in his possession or under his management disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation- It is no necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

**307. Attempt to murder-** Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinabove mentioned.”

9. While we see no reason, as at present, to express any opinion regarding the application of Section 307 IPC, we are satisfied, *prima facie*, that, if the allegations in the Writ Petition are true, then the ingredients of Section 188 IPC may well be attracted.

10. The order, affixed outside the residence of the fourth respondent on 20.05.2020, was promulgated by the District Magistrate, Dehradun and the Chief Medical Officer, Dehradun, both of whom are public servants. The said order required those residing in the house to be self-quarantined for 14 days from 20.05.2020 till 03.06.2020. In effect, residents of the said house were directed to abstain from leaving their house for this period of 14 days. If, as is contended on behalf of the petitioner, the fourth respondent was residing in the very same house during the period when he participated in the Cabinet Meetings, he may then, *prima facie*, be liable to be proceeded against for the offence under Section 188 IPC

as his failure to maintain home-quarantine, and his act of participating in Cabinet Meetings, has resulted in the risk of his infecting others.

11. As to why different standards are adopted for home quarantine violations; and when action is initiated against the common-man, why no action is taken against those holding constitutional offices indulging in such violations, needs to be ascertained.

12. List the matter after three weeks.

13. Let a certified copy of this order be issued to the learned counsel for the parties, on payment of the prescribed charges, today itself.

**(Ramesh Chandra Khulbe, J.)**

05.06.2020

Rahul

**(Ramesh Ranganathan, C.J.)**

05.06.2020