

Hon'ble Alok Kumar Verma, J.

Mr. Ramji Shrivastava, learned Advocate for the applicant.

Mr. J.S. Virk, learned Deputy Advocate General assisted by Mr. Rohit Dhyani, learned Brief Holder for the State of Uttarakhand.

This criminal miscellaneous application has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code") to quash the impugned judgment and order dated 30.01.2021, passed by learned IIIrd Additional Sessions Judge, Dehradun in Criminal Revision No. 9 of 2019, Vishamber Singh Negi Vs. State of Uttarakhand and others and order dated 11.01.2019, passed by City Magistrate, Dehradun in Case No. 52 of 2018, State of Uttarakhand through Sub Divisional Magistrate (Sadar) Dehradun vs. Vishamber Singh Negi and another under Section 133 of the Code, whereby the City Magistrate directed the applicant and respondent no.3 to remove the encroachment/public nuisance from public path adjoining to their houses within a period of one month; the operation and effect of impugned judgment and order dated 30.01.2021 and order dated 11.01.2019 be stayed during the pendency of present application.

Learned counsel for the applicant submitted that a civil suit Original Suit No. 47 of 2018, Sri Vishamber Singh Negi Vs. Sri Tirth Singh Negi and another is pending in which, the defendants have filed counter claim. The property of counter claim is disputed property in the impugned order.

Learned counsel for the applicant further submitted that the said original suit and the counter claim have been filed before the initiation of the proceeding under Section 133 of the Code.

Issue notice to respondent nos. 2 and 3.

Steps to be taken within three days.

Learned counsel appearing for the State requested three weeks' time to file counter affidavit.

Post this matter on 03.03.2021, till then operation and effect of the above mentioned judgment and order dated 30.01.2021, passed by learned IIIrd Additional Sessions Judge, Dehradun and order dated 11.01.2019, passed by City Magistrate, Dehradun are stayed.

It is clarified that no adjournment shall be granted on the demand of the applicant after counter affidavit is filed.

Urgency Application No. 1 of 2021 stands disposed of accordingly.

(Alok Kumar Verma, J.)
(Vacation Judge)
10.02.2021

Shubham