

(2020) 02 UK CK 0053

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 337 Of 2020

Krishna Shamsheer JB Rana

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 25-02-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 2(h), 154, 482
Indian Penal Code, 1860 — Section 120B, 419, 420, 467, 468, 471
Constitution Of India, 1950 — Article 226

Citation : (2020) 02 UK CK 0053

Hon'ble Judges : Ravindra Maithani, J

Bench : Single Bench

Advocate : Samridhi Arora, Saurabh Agarwal, V.K.Jemini, T.C.Agrawal

Final Decision : Dismissed

Judgement

Ravindra Maithani, J

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") is preferred to

quash the FIR No. 0145 of 2018, dated 03.09.2018 and charge sheet dated 04.02.2019 as well as the summoning order dated 25.01.2020 passed in

criminal case no. 0406 of 2019, State vs. Krishna Shamsheer Jang Bahadur Rana, f(or short, "the case"), pending in the Court of learned

Judicial Magistrate, Rishikesh, District Dehradun.

2. The case is based on an FIR No. 0145/2018 dated 03.09.2018 filed by respondent no.2 against petitioner no.1 under Sections 419, 420, 467, 468 and

471 IPC. According to it, petitioner no.1 conspired with Mr. Samudra Narayan Chaudhary late cousin brother of respondent no. 2. Late Mr. Samudra

Narayan Chaudhary impersonated respondent no.2 and they got a power of

attorney executed in favour of petitioner no.1. The forged power of attorney was used to sell a property owned by respondent no.2. In the transaction, false documents were used. There are other details also in the FIR.

It is this FIR, in which, after investigation, charge-sheet has been submitted against the petitioners under Sections 419, 420, 467, 468, 471 and 120B

IPC.

3. Heard learned counsel for the petitioners, learned State counsel and perused the record.

4. Learned counsel for the petitioners would raise following points in her arguments:

(1) There has been procedural irregularity in the instant matter because the FIR was not given to Police straightway, instead, it was given to Special

Investigating Team (SIT), which after an inquiry directed for lodging an FIR. According to learned counsel the SIT could not have directed lodging of

the FIR.

(2) A person cannot choose an investigating agency. SIT can be formed by the orders of the High Court only. Investigation has not been fair because

the Police was under the influence of the SIT, and,

(3) There is delay in lodging the FIR.

Therefore, it is argued that these are the grounds which warrant an interference of this Court.

5. In support of her contention, learned counsel for the petitioners placed reliance upon the principles of law as laid down in the cases of Association

for Protection of Public Rights and Interest through its Secretary v. the State of Bihar & others, 1990 SCC Online Pat 91; Vindheshwari Prasad

Khare vs. State of Chhatisgarh, through the Secretary, Ministry of Home and others, 2019 SCC online Chh 49 a; and Romila Thapar vs. Union of India

& others, (2018) 10 SCC 75

6. Reference has been made by learned counsel for the petitioners on para 27 and 28 of the judgment of Association for Protection of Public Rights

and Interest through its Secretary (supra). In para 28, the Honâ??ble Court observed as hereunder:

â??28. These provisions taken together clearly spell out that information relating to the commission of a cognizable offence has to be received by an

officer-in-charge of a Police station and on receipt of information relating to the commission of a cognizable offence, the officer-in-charge of a police

station may investigate or hold preliminary inquiry as provided in Sections 156 to 159.â??

7. In the case of Vindheshwari Prasad Khare (supra), where a petition was moved for investigation by the SIT, the Honâ??ble Court, inter alia,

held that:

â??34. â?|â?|â?| It is not the case that the instant case has any national and international ramifications or impact, repercussion. The prayer made in

the petition for transfer of investigation to CBI or constituting a Special Investigation Team cannot be directed particularly when the complaint has

been filed after suffering the order of termination at the ends of Bank which is presided by respondent no. 5 and the petitioner is also suffering

criminal prosecution for his act at the instant of the respondent no. 5 in view of the fact that no investigation in terms of Section 2 (h) of the Code is

pending and even the petitioner is not appearing before EOW. Even otherwise, the petitioner cannot claim investigation by CBI or by constituting SIT

as a matter of right which can only be directed in making out exceptional and extraordinary case having national or countrywide ramification.â??

8. In the case of Romila Thapar (supra) reference to judgment passed in Divine Retreat Centre v. State of Kerala, (2008) 3 SCC 542 with regard to

exercise of inherent jurisdiction has been made in para 27, which reads as hereunder:

â??27. â?|â?|â?|.The Court made it amply clear that neither the accused nor the complainant or informant are entitled to choose their own

Investigating Agency to investigate the crime in which they are interested. The Court then went on to clarify that the High Court in exercise of its

power under Article 226 of the Constitution can always issue appropriate directions at the instance of the aggrieved person if the High Court is

convinced that the power of investigation has been exercised by the investigating officer mala fide.â??

9. On the other hand, on behalf of the State, learned Deputy Advocate General would submit that investigation in the instant case has been done in

accordance with law; SIT has not investigated the case; in the State of Uttarakhand after its creation there were number of allegations regarding the

property and offences related to it, therefore, the State Government constituted a SIT, which inquired first those allegations and only if it is found that

some cognizable offence has been committed, the FIR is lodged.

10. This is a petition under Section 482 of the Code to quash the criminal proceedings which reached at the stage of filing of charge-sheet after the

investigation. The jurisdiction is very wide to ensure the complete justice, but at the same time, it is circumscribed by certain principles which guide the

court in exercise of the jurisdiction. In a catena of decisions, the guidelines have been laid down by the Court.

11. Learned counsel for the petitioners referred to sub-para (i) of para 102 in the judgment of State of Haryana and others vs. Bhajan Lal and others,

1992 Supp(1) SCC335. In it Honâ??ble Supreme Court observed as hereunder:

â??Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their

entirety do not prima facie constitute any offence or make out a case against the accused, an interpretation upon Section 482 of the Code may be

warranted.â??

12. It is true that in the charge sheet it has been mentioned that the informant gave the complaint to the SIT, Dehradun with regard to the forged

documents and selling of land. The charge sheet also mentions that at the conclusion based on the inquiry of SIT the FIR in the instant case was

lodged. FIR in the instant case is filed as Annexure No.1 to the petition. The FIR is lodged under Section 154 of the Code and the informant is

respondent no.2. It does not mention about any conclusion drawn by the SIT on the basis of which, the FIR has been lodged. It is true that the

investigation has to be carried out in accordance with law. In the case of cognizable offence, this process is initiated with the lodging of the FIR under

Sections 154 of the Code. It is true that the investigation should be fair to ensure the fair trial. In the instant case, the investigation has not been done

by the SIT. The FIR is lodged under Section 154 of the Code. If the FIR has been routed through some agency it can not give a ground to intervene

under Section 482 of the Code. It is a categorical case in the FIR that the informant (respondent no.2) was impersonated by the deceased Samudra

Narayan Chaudhary , who happens to be the cousin of respondent no.2 and according to the FIR the power of attorney was got executed in the name

of petitioner no.1.

13. An argument has been advanced that till date suit for cancelation of the sale deed has not been filed which also does not make any difference. In

any given case proceedings may be undertaken both under civil and a criminal law. What is essential to initiate criminal investigation is that the civil

transactions must carry with it an element of criminality. Here is a case where, in the FIR, there are categorical statements about impersonation and,

thereafter on the basis of forged document selling of the property using a forged power of attorney, as genuine. An argument is advanced that there is

delay of seven years. The power of attorney was allegedly forged in the year 2011 and it was used as genuine in the year 2015. It is also true that the

FIR was lodged on 3rd September, 2018. But, it is not a ground to make any intervention under Section 482 of the Code. There may be delay but

those are the aspects which may be determined at the trial.

14. The investigating officer also obtained the expert opinion with regard to finger prints and thereafter collected the evidence of forgery. In the instant

case, the FIR discloses commission of cognizable offence after investigation, the charge-sheet has been submitted against the petitioners.

15. Having considered the submissions in the facts and circumstances of the case, this Court is of the view that there are no reasons which may

warrant interference by this Court. Accordingly, the petition deserves to be dismissed.

16. At this stage, learned counsel for the petitioners would submit that directions may be issued that the bail application of the petitioners be considered

on the same day, when they surrender before the court concerned.

17. The petition is dismissed. However, if the petitioners surrender before the court concerned and apply for their bail, the same may be disposed of,

as expeditiously as possible, in accordance with law.