

(2022) 05 UK CK 0051

In the Uttarakhand High Court

Case No : Criminal Writ Petition No. 752 Of 2022

Preeti Sharma And Two Others

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 17-05-2022

Acts Referred:

Indian Penal Code, 1860 — Section 306

Code Of Criminal Procedure, 1973 — Section 155(2), 156(1), 173, 438, 482

Constitution Of India, 1950 — Article 226, 227

Citation : (2022) 05 UK CK 0051

Hon'ble Judges : Alok Kumar Verma, J

Bench : Single Bench

Advocate : Manoj Joshi, Pratiroop Pandey

Final Decision : Dismissed

Judgement

Alok Kumar Verma, J

1. This Criminal Writ Petition has been filed under Article 226 of the Constitution of India to issue a writ of certiorari to quash the impugned First Information Report No.182 of 2022, registered with Police Station Haldwani, District Nainital for the offence under Section 306 of I.P.C.; a writ of mandamus directing the respondent no.2 not to arrest the petitioners in pursuance to the impugned First Information Report.

2. Heard Mr. Manoj Joshi, the learned counsel for the petitioners and Mr. Pratiroop Pandey, the learned A.G.A. for the State.

3. Admittedly, the deceased Jitendra Sharma was the husband of Smt. Preeti Sharma, the petitioner no.1. Smt. Poonam Sharma, the petitioner no.2, is the sister of the petitioner no.1. Mr. Pankaj Sharma, the petitioner no.3, is the brother of the petitioner no.1.

4. The First Information Report was lodged by Mr. Manoj Sharma, the brother of the deceased-Jitendra Sharma. According to the First Information Report, on

21.12.2021, at around 17 hrs., Vanshu, the nephew of the informant, informed on phone that his father has committed suicide. According to the FIR, a suicide note is available, in which all the three petitioners have been named. The informant further alleged that his brother has not committed suicide, but, after killing his brother, his dead body was hanged from the fan. The deceased had told him before dying that his gold worth of Rs.2,00,000/- was kept in the Bank of Baroda, and these people wanted to kill him. According to the informant, all these records are kept in his mobile. The First Information Report was registered at 20.45 hrs. on 06.04.2022 against all the petitioners. The matter is still in investigation.

5. Mr. Manoj Joshi, the learned counsel for the petitioners, submitted that the petitioners have been falsely implicated; there were disputes between the petitioner no.1 and the deceased; the deceased had abused the petitioner no.1 publically through Facebook, Posts, Chats and WhatsApp; the deceased had threatened of committing suicide; no prima facie case is made out against the petitioners for the offence punishable under Section 306 of IPC and the FIR was lodged with the ulterior motive.

6. The learned counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court in "Mahendra Singh and another Gyatribai vs. State of M.P., 1995 Supp (3) SCC 731". The said judgment is not applicable in this matter at this stage, because the said judgment of the Hon'ble Supreme Court is on merit.

7. On the other hand, Mr. Pratiroop Pandey, the learned A.G.A. for the State, opposed the submissions of the learned counsel for the petitioners and submitted that there are specific allegations in the First Information Report, and, apart from this, electronic evidence as well as suicide note are also available to show the involvement of the petitioners. He further submitted that at this stage, the Court cannot adjust the correctness of the allegations.

8. During the arguments, the learned counsel for the petitioners conceded that in the facts and circumstances of the case, this Court cannot adjust the correctness of the allegations. Therefore, the petitioners do not want to press the prayer no.1, however, they are requesting to issue a writ of mandamus directing the respondent no.2 not to arrest the petitioners. He further submitted that during the investigation, it is found that the deceased was living separately from the petitioner no.1 for the last four months.

9. In this matter, the quashing of the First Information Report is the main relief and the second relief is the alternate relief. It is well settled that where, the main relief cannot be granted, the order of stay of arrest cannot be granted.

10. In Pepsi Food Limited vs. Special Judicial Magistrate and others, 1998 (36) ACC 20, the Hon'ble Supreme Court has observed that the power conferred on the High Court under Article 226 and 227 of the Constitution of India, and under Section 482 of the Code have no limits, but more the power more due care and

caution is to be exercised in invoking these powers.

11. In *State of Haryana v. Bhajan Lal* (1992) Supp.(1) SCC 335, the Hon'ble Supreme Court summarized the legal position by laying the following guidelines to be followed by High Courts in exercise of its jurisdiction:-

"(1) 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

12. In '*M/s. Neeharika Infrastructure Private Ltd. Vs. State of Maharashtra and others*', 2021 SCC OnLine SC 315, the Hon'ble Supreme Court has held as under:-

"10. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of *Khawaja Nazir Ahmad* (supra), the following principles of law emerge:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

- iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;
- iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;
- vi) Criminal proceedings ought not to be scuttled at the initial stage;
- vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.
- ix) The functions of the judiciary and the police are complementary, not overlapping;
- x) Save in exceptional cases where noninterference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;
- xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;
- xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;
- xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR."

"23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/charge-sheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/ FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule; viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not

overlapping;

x) Save in exceptional cases where noninterference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent

court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/charge-sheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

13. It is well settled that at the time of investigation, merits of the case cannot be tested and it is wholly impermissible for this Court to enter into the factual arena to adjudge the correctness of the allegations. This Court would not also examine the genuineness of the allegations since this Court does not function as a Court of Appeal or Revision, while exercising its jurisdiction under Article 226 of the Constitution of India. In this matter it cannot be said that there are no allegations against the petitioners. Apart this, learned counsel for the petitioners could not able to show at this stage that allegations are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the petitioners.

14. In view of the aforesaid analysis, the prayer for quashing the FIR is refused. Therefore, this Criminal Writ Petition (No.752 of 2022), filed under Article 226 of the Constitution of India, fails, and, accordingly, is dismissed.

15. Since, the investigation is in progress, this Court makes it clear that the observations made earlier are only for the disposal of this application, filed under Article 226 of the Constitution of India. These observations will not influence the investigation or the trial.