

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Recall/Restoration Application No. 1026 of 2011

In

CRIMINAL MISC. APPLICATION (C-482) No. 1143 of 2010

Harpal Singh, aged about 61 years
S/o Late Ram Charan Singh
R/o 17, Ashok Vatika
Prabhat Nagar, Meerut

.....Applicant

Versus

1. State of Uttarakhand , through
its Principal Secretary, Department
of Home, Civil Secretariat, Dehradun,
Uttarakhand
2. Vikas Kumar Roorkeewal
S/o Late Radhey Shyam
R/o 108, United India Apartment
Mayur Vihar-1 Vistar
Near Samachar Apartment
Delhi – 110 091
3. Smt. Kamlesh Upadhyay
Investigating Officer/Deputy
Superintendent of Police, Roorkee
District Hardwar, Uttarakhand

.....Opposite parties

**Shri Prashant Chandra, Senior Advocate, assisted by Shri A.K.Joshi, and Shri
Ram Raj, Advocates, present for the petitioner
Shri S.S.Adhikari, A.G.A., present for the State.**

Hon'ble Prafulla C. Pant, J.

This is Recall Application No. 1026 of 2011, moved on behalf of the petitioner seeking recall of order dated 20.12.2011, whereby this court has dismissed the petition under section 482 of Cr.P.C., in the light of the order dated 11.01.2011, passed by the Apex Court in *Vikas Kumar Roorkewal vs. State of Uttarakhand in Transfer Petition (criminal) no. 29 of 2008*.

(2) Heard learned counsel for the parties.

(3) Brief facts of the case, are that, a murder of a Superintending Engineer said to have taken place within the limits of Police Station Kotwali, Roorkee. In respect of said offence a First Information Report was lodged which was registered as F.I.R. No. 169 of 2006 (Crime No. 182 of 2006). After investigation, the first charge sheet was filed against eight accused. The criminal case registered on receipt of said charge sheet was committed for the trial to the court of

Sessions, and the same was registered as Sessions Trial No. 6 of 2007. It appears that after further investigation a supplementary charge sheet was submitted against the petitioner Chaudhary Harpal Singh, an Engineer. On receipt of the supplementary charge sheet Criminal Case No. 3539 of 2010, was registered by the Judicial Magistrate, Roorkee, and summons were issued against the accused (present petitioner), on 29.09.2010. Challenging said summoning order, the petitioner filed Criminal Misc. Application (C482) No. 1143 of 2010, before this Court, and the charge sheet was sought to be quashed. On 25.11.2010, an interim order was passed by this Court directing that the same shall be operative till in the next date of listing.

(4) An Application No. 4615 of 2011, was moved on behalf of the State to hear, and dispose of the petition under section 482 of Cr.P.C., at the earliest, so that the case may be transferred to the competent Court of jurisdiction at Delhi, in pursuance to the order passed by the Apex Court, on 11.01.2011.

(5) Perusal of the copy of order passed by the Apex Court in Transfer Petition (criminal) no. 29 of 2008, Vikas Kumar Roorkeval vs. State of Uttarakhand, which was annexed with the affidavit filed with the application moved on behalf of the State, shows that proceedings of the Sessions Trial No. 6 of 2007, State vs. Aakash Tyagi and others, pending in the court of First Fast Track Court/Additional Sessions Judge, Hardwar, (Uttarakhand), arisen out of crime no. 182 of 2006/ F.I.R. No. 169 of 2006, were transferred to competent Court of jurisdiction at Delhi. All the concerned agencies were directed to take appropriate steps for protecting the witnesses, and to ensure that the trial concludes as early as possible, and without any avoidable delay.

(6) Considering said direction, this Court vide its order dated 20.12.2011, dismissed the petition under section 482 of Cr.P.C., filed by the present petitioner.

(7) Learned counsel for the petitioner submitted that the case was not listed for final hearing, as such, the order dated 20.12.2011, dismissing the petition under section 482 of Cr.P.C., be recalled.

(8) In the opinion of this Court, hearing of the petition under section 482 of Cr.P.C., on merits was not required, in view of the fact that the main case has already been transferred by the Supreme Court to the court at Delhi. It is pertinent to mention here that main charge sheet, as well as the supplementary charge sheet have arisen out of same crime number, and in respect of the same murder.

(9) On behalf of the petitioner, it is argued that this Court has committed mistake by dismissing the petition under section 482 of Cr.P.C., and the same to be recalled.

(10) Having considered submissions of learned counsel for the parties, and after going through the papers on record, this court does not find any mistake, which requires recall of the order.

Provision of section 482 of Cr.P.C., are meant for securing the ends of justice. Keeping in mind the said object, this Court had passed the order dated 20.12.2011, in the light of the order dated 11.01.2011, passed by the Apex Court.

(11) On behalf of the petitioner, it is pointed out that the order passed by the Apex Court specifically refers to the proceedings of Sessions Trial No. 6 of 2007, and there is no reference of transfer of the supplementary charge sheet, which is yet to be committed to the court of sessions. No doubt, the order dated 11.01.2011, does not specifically refer to any supplementary charge sheet, but spirit of the order was to be kept in mind. The State had prayed in its application (which was disposed of by this Court on order dated 20.12.2011), expressing intention of taking steps for transfer of the case in question.

(12) Attention of this court is also drawn to the fact that in the Application No. 4615 of 2011, State has not shown itself as applicant, and thereby misled the court. However, on going

through the entire application and considering the fact that the application was moved by the State, and the same was signed by the Additional Government Advocate, there is no misleading of the court. It is evident from the first para of this Court's order dated 20.12.2011, it is observed that the application has been moved on behalf of the State.

(13) For the reasons as discussed above, the Recall Application No. 1026 of 2011, is hereby dismissed.

(Prafulla C. Pant, J.)

Dt.30.12.2011
N.P