

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

**Criminal Writ Petition No. 210 of 2020**

Abdul Sahil and others .....Petitioners

Vs.

State of Uttarakhand & others .....Respondents

**Hon'ble Alok Kumar Verma, J.**

Heard Mr. Mehboob Rahi, learned Advocate for the petitioners and Mr. J.S. Virk, learned A.G.A with Mr. K.S. Rawal, learned Brief Holder for the State of Uttarakhand/respondent nos. 1 & 2.

2. For the reasons stated in the Urgency Application, the Urgency Application No.1589 of 2020 is allowed.

3. This Criminal Writ Petition is filed under Article 226 of the Constitution of India seeking a writ of certiorari to quash the impugned F.I.R. dated 03.10.2019 registered as Case Crime No. 413 of 2019 under Sections 498A, 506 IPC and 3/4 of the Dowry Prohibition Act, at Police Station Vikas Nagar, District Dehradun; and, a writ of mandamus commanding the respondent nos. 1 & 2 not to arrest the petitioners in connection with the said F.I.R. till the pendency of this Writ Petition.

4. Facts, to the limited extent necessary, are that the respondent no. 3 lodged an F.I.R. on 03.10.2019 with the allegations that after the divorce from her previous husband on 24.05.2010, the informant/respondent no. 3 came into contact with the petitioner no. 1 and intimacy was developed between them. Thereafter, petitioner no. 1 proposed to marry her. It is also alleged that prior to marriage, the petitioner no.

1 made physical relations with respondent no. 3/informant on various occasions and when she became pregnant, the petitioner no. 1 gave her medicines for abortion. On 25.12.2018, the marriage of the informant was solemnized with petitioner no. 1 as per Muslim rites and rituals. After the marriage, the respondent no. 3/informant came to know that petitioner no. 1 was not having B.Tech degree and was doing the work of carpenter and it is further alleged in the F.I.R that after marriage she was being harassed and tortured by the accused persons for want of dowry and she was ousted from her matrimonial house.

5. At the Bar, the learned counsel for the petitioners admits this fact that the marriage was solemnized between the petitioner no. 1 and respondent no. 3 on 25.12.2018 and respondent no. 3 is still his wife. However, the petitioner no. 1 wants to take divorce from the respondent no. 3. The learned counsel for the petitioners further submits that the F.I.R. and the allegations of the State Counsel are factually incorrect. The learned counsel for the petitioners submits that arrest should not be mechanical.

6. The learned counsel appearing for the State submits that the F.I.R. discloses the commission of a cognizable offence.

7. It is wholly impermissible for this Court to enter into the factual arena to adjudge the correctness of the allegations in the FIR. The Court would not also examine the genuineness of the allegations made in the FIR during the course of investigation, since the Court does not function as a Court of Appeal or Revision; and the Court cannot act like an Investigating Agency while exercising its extraordinary jurisdiction under Article 226 of the Constitution of India.

8. In this matter, the FIR discloses the commission of a cognizable offence and it cannot be said that there are no allegations against the petitioner.

9. It is true, that arrest should not be mechanical. The exercise of power of arrest requires reasonable belief about a person's complicity, and also about the need to effect arrest. Arrest may be justified if there is credible information or reasonable suspicion, and arrest is necessary to prevent further offence or for proper investigation or to check interference with the evidence. In Criminal Appeal No. 1340 of 2019 **P. Chidambaram Vs. Directorate of Enforcement**, Hon'ble Apex Court on 05.09.2019 has held that, ordinarily, arrest is a part of the procedure of the investigation to secure not only the presence of the accused but for several other purposes also.

10. In **Pepsi Food Limited Vs. Special Judicial Magistrate and others, 1998(36) ACC 20**, the Hon'ble Apex 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 **Adri Dharan Das Vs. State of West Bengal, AIR 2005 SC 1057**, the Hon'ble Apex Court has held that the powers and functions of the police and the Courts is clearly demarcated, and the Court will not ordinarily intervene with the investigation of a crime or with the arrest of the accused in a cognizable case, which is the province of the police.

12. In **P. Chidambaram (Supra)**, the Hon'ble Apex Court observed that there is a well-defined and demarcated

function in the field of investigation, and its subsequent adjudication; it is not the function of the Court to monitor the investigation process; so long as the investigation does not violate any provision of law, it must be left to the discretion of the investigating agency to decide the course of investigation; if the Court were to interfere at each and every stage of the investigation, and the interrogation of the accused, it would affect the normal course of investigation; and it must be left to the investigating agency to proceed in its own manner in interrogation of the accused, the nature of questions put to him and the manner of interrogation of the accused.

13. The case in hand is also not covered under any of the categories referred to in paragraph 102 of the judgment of the Hon'ble Apex Court in **State of Haryana and others Vs. Bhajan Lal and others (1992) Supplementary (1) SCC 335**.

14. In **State of Haryana and others Vs. Bhajan Lal (Supra)**, the Hon'ble Apex Court examined the extraordinary power under Article 226 of the Constitution of India and also the inherent powers under Section 482 of the Code. Para 102 of the judgment of Hon'ble Apex Court reads as follows:-

“In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482 of the code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid

formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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.

15. In view of the above detailed discussion, the writ petition is dismissed. No order as to costs.

**(Alok Kumar Verma, J.)**  
**Vacation Judge**  
29.01.2020

NEHA