

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

Criminal Writ Petition No. 1721 of 2022

Kishan Chand

.....Petitioner

Versus

State of Uttarakhand & Ors.

.....Respondents

Present:

Mr. Tapan Singh, the learned counsel for the petitioner.

Mr. J.S. Virk, the learned Dy. Advocate General for the State.

Judgement reserved on: 16.11.2022

Judgement delivered on: 30.11.2022.

Sri Sanjaya Kumar Mishra, J.

By filing this writ petition, the petitioner has prayed for issuance of writ in the nature of certiorari quashing the FIR date 08.08.2022, registered as FIR No. 06 of 2022, under Sections 420, 466 and 467 of the Indian Penal Code, 1860 (hereinafter referred to as the Penal Code for brevity), Section 3A and 3B of Forest Conservation Act, 1980, Indian Forest Act, 1972 and under Section 13(1)(A) of Prevention of Corruption Act, 1988 (hereinafter referred to as the P.C. Act for brevity) registered by the Vigilance Establishment Sector, Haldwani, District Nainital. He has also prayed for a writ in the nature of mandamus commanding respondent no. 2 and 3 not to arrest the petitioner in connection with aforesaid FIR during the pendency of the writ petition and to grant any relief as the Court may deem just and proper.

2. The matter was listed on 09.09.2022. On that day the Court directed the learned Dy. Advocate General to

take instructions regarding materials collected against the petitioner by the investigating agency and produce the same before the Court on the next date. On 16.09.2022, the learned Dy. Advocate General submitted the written instructions received from the I.O. on 15.09.2022. The learned Dy. Advocate General informed the Court that on 08.08.2022, the FIR was lodged on the basis of an open inquiry by the Government and during course of the investigation, on the basis of the statement recorded under Section 161 and 164 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code for brevity) it was revealed that the petitioner has violated the guidelines issued by the Ministry of Environment, Forest and Climate Change, Government of India, and he was involved in illegal construction work in the Morghatti Range from the fund of Campa, Pakharo Range and Tilwadhang (Kotdwar), Kugadda, Saneh in the violation of Forest Conservation and Indian Forest Act, 1972 on the basis of forged, back dated bills due to which huge loss was suffered by the State Exchequer. It was brought to our notice that Pramod Kashyap, the Dak Dispatcher, stated before the investigating officer that the petitioner pressurized him to do the back dated entry in the F-7 register (dispatch register) regarding taking the financial approval of the Technical Audit Committee from the Government and work orders and forged bills and documents were prepared due to which State Exchequers suffered huge losses.

3. It is also seen that another case being FIR No. 04 of 2019, under Section 14(1) E 13(1)B of the P.C. Act read with Section 120 B of the Penal Code has also been initiated. It is also brought to our notice that from the investigation, as present there is credible evidence against the petitioner under Section 409, 420, 466, 477, 468, 471, 120B, 34 of the Penal Code and under Section 13 (1)(A) & 13(2) of the P.C. Act is well made out against the petitioner.

4. Mr. Tapan Singh, the learned counsel for the petitioner would submit that unless there is allegation in the FIR that the respondent and other accused persons had intention to wrongful gain or make any wrongful loss to the employer, they cannot be said to be committed the offence of 409 and 420 read with section 120 B of the Penal Code. However, in this case, the petitioner who was working as a Senior Forest Official, In-charge of the Tiger Corbet Reserve and in such capacity he has committed large number of irregularities. Even evidences are coming from the records that he forged the documents for which there is no plausible explanation from the side of the defence. It is true that all those allegations which is being unearthed in course of investigation are not reflected in its entirety in the FIR, however, this Court is of the view that since the FIR is not encyclopaedia of all the facts, once, cognizable case is shown in the FIR, the investigating agency has the right to investigate the same and collect whatever evidence/materials are

available. Furthermore, FIR or criminal proceedings are quashed only in exceptional and rare cases, it cannot be quashed in a routine manner specially when a person having hold high office, has allegedly committed certain financial irregularities, forged the document, violated forest laws, taking allegedly advantage of his position as a senior forest official then investigating agency should be allowed to continue the investigation and to come to a logical conclusion.

5. In the case of *State of Haryana & others vs. Bhajan Lal & other*, AIR 1992 SC 604, wherein at paragraph 108, the Hon'ble Supreme Court has laid down the principles of law enunciated by the Supreme Court in the series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution or inherent powers under Section 482 of Code for quashing of the FIR, charge sheet or cognizance. The principles are as follows: -

(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.

6. This case does not fall within the purview of aforesaid consideration. Furthermore, in the succeeding paragraph, after laying the principles, the Hon'ble Supreme Court held that the powers under Section 482 Cr.P.C., which also applies to proceedings under Article 226 of the Constitution of India for quashing of the FIR should be exercised in the rare and exceptional cases. This Court is of the opinion that it is not a rare case to the extent of quashing of the FIR.

7. Hence, writ petition is dismissed being devoid of merit. Interim order dated 21.09.2022 stands vacated.

(Sanjaya Kumar Mishra, J.)
(Grant certified copy as per rules)

