

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

**Writ Petition (Criminal) No. 2420 of 2022**

Hakkam Ali and others .....Petitioners

-Versus-

State of Uttarakhand & Others .....Respondents

Present: Mr. Sachin Kumar Sharma, the learned counsel for the petitioners.  
 Mr. J. S. Virk, learned Deputy Advocate General for the State.

**Date of Hearing and Order: 23.12.2022**

**Sri Sanjaya Kumar Mishra, J.**

Upon hearing the learned counsel for the parties, the Court has passed the following order:-

1. By filing this writ petition, the petitioners have prayed for the following reliefs:-
  - a. *Issue a writ, order or direction in the nature of Certiorari to quash the F.I.R. dated 16.12.2022, of F.I.R No. 1499 of 2022, u/s 147, 148, 149, 307, 452 and 506 of I.P.C, Police Station – Manglore, District – Haridwar (contained as Annexure no. 1) lodged against the petitioners.*
  - b. *Issue a writ, order or direction in the nature of Mandamus commanding the respondent nos. 1 & 2 not to harass and arrest the petitioners in view of the impugned F.I.R. till the collection of credible evidence*

*against the petitioners or till the filing of the report submitted u/S 173 of Cr.P.C.*

*c. To pass a suitable writ, order or direction in favour of the petitioners, which this Hon'ble Court may deem fit and proper in the circumstances of the present case.*

2. The only contention raised by the learned counsel for the petitioners is that prior to lodging of the impugned F.I.R. on 15.12.2022 by the complainant alleging that the petitioners and others trespassed into his house with weapons i.e. Bandook, Lathi - Dande, and Talwaar committed the offence of attempt to murder another FIR was lodged by the police. The incident took place on 11.12.2022 at about 6:30 P.M. in village Ghosipura, Manglore, District – Haridwar.

3. It is further apparent from the record that the occurrence took place at about 12:00 noon, two groups fought with each other leading to injuries etc. The said incident also took place in village Ghosipura, District – Haridwar. The learned counsel for the petitioners relying upon two Judges Bench judgment of the Hon'ble Supreme Court in the case of “T. T. Antony Vs. State of Kerala and Others, (2001) 6 SCC 181” wherein the

Hon'ble Supreme Court has held that once an F.I.R. is being lodged for an incident that took place between the parties, the second F.I.R. is hit by the provisions of Section 162 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code" for brevity) and it can be as a statement under Section 161 of the Code, on the basis of such F.I.R., investigation cannot proceed.

4. Learned Deputy Advocate General for the State, on the other hand, relies upon later case of "P Shreekumar Vs. State of Kerala & Others, (2018) 4 SCC 579", wherein Para 28 has taken into consideration the observations made by Justice N. Santosh Hegde in the case of "Upkar Singh Vs. State Ved Prakash, (2004) 13 SCC 292", wherein the Hon'ble Supreme Court held that if the law laid down by the Supreme Court in T.T. Antony case is to be accepted as holding that a second complaint in regard to same incident filed as a counter-complaint is prohibited under the Code then, in the opinion of the Supreme Court, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given by the Hon'ble Supreme Court i.e. if in regard to a crime committed by a real accused he takes the first opportunity to lodge a false

complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question, consequently he will be deprived of his legitimated right to bring the real accused to book. Hence, the observations of the Hon'ble Supreme Court in the case of T.T. Antony (supra) were not approved by the later judgment. However, in the case of "Surendra Kaushik Vs. State of Uttarakhand, (2005) 1 CC 248, the Hon'ble Supreme Court further held that it is quite luminous that lodgment of two F.I.Rs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter F.I.R. relating to the same or connected cognizable offence. What is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned on the original complaint. As it is further made clear by the three Judge Bench in the case of Upkar Singh (supra), the

prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident do take different shapes and in that event, lodgment of two F.I.Rs is permissible

5. In the case of 'P. Sreekumar Vs. State of Kerala & Others, (2018) 4 SCC 579", the Supreme Court was considering whether the second F.I.R. relating to one incident but giving a different description is liable to be quashed or not and the Supreme Court answered in Negative by referring to the aforementioned cases.
6. In this case also the first F.I.R. is about a group class, which is lodged by the police and that too it has allegedly taken place at 00:00 hours, which is considered by this Court to be 12:00 noon. However, the incident that is described in the F.I.R. impugned, though did take place allegedly on the same day, i.e., on 11.12.2022. It has reported to be taken place at about 5:30 P.M, and in the house of the complainant, and not in the street as alleged in the F.I.R. lodged by the police.

7. In that view of the matter, this Court is of the opinion that there is no merit in this writ application. Accordingly, the same is dismissed.

**(Sanjaya Kumar Mishra, J.)**

23.12.2022

(Grant urgent certified copy of this order, as per Rules)

A/-