

**HIGH COURT OF UTTARAKHAND AT  
NAINITAL**

**Criminal Writ Petition No.342 of 2023**

Ashok Kumar Windlass

....Petitioner

Versus

State of Uttarakhand and Others

....Respondents

Present:-

Mr. Arvind Vashistha, Senior Advocate assisted by Mr. Vivek Pathak, Advocate for the petitioner.

Mr. Lalit Miglani, A.G.A. for the State.

Mr. Rakesh Thapliyal, Senior Advocate assisted by Mr. Lalit Sharma, Advocate for the private respondents.

**JUDGMENT**

**Hon'ble Ravindra Maithani, J. (Oral)**

The petitioner seeks quashing of FIR No.RC0072023S0001 dated 13.01.2023, under Sections 120-B, 420, 447, 467, 468, 471 IPC, Police Station ACB, District-Dehradun.

2. Heard learned counsel for the parties and perused the record.

3. Facts necessary to appreciate the controversy, briefly stated, are as follows: On 14.02.2018, an FIR (FIR No.13 of 2018) was lodged by one Durgesh Gautam against the petitioner and others at Police Station Rajpur, District Dehradun, Under Section 420, 447, 467, 468, 471, 120-B IPC. According to the FIR, the petitioner along with co-accused in collusion with the Revenue Officials recorded larger area within their ownership and took possession of

Gram Samaj Land and other lands. They raised constructions as well. In this FIR, investigation was carried out and chargesheet was submitted against Heera Singh Bisht, Vijay Singh Negi and on 14.10.2018, chargesheet was filed against Gopal Goenka, that being Charge Sheet No. 41(c)/18. In this chargesheet, at Serial No.26, the petitioner has been shown as a witness. The Investigating Officer records that investigation is still pending against other co-accused. In that chargesheet, cognizance was taken on 18.03.2019. It appears that, subsequently, the State of Uttarakhand transferred the remaining investigation to the Central Bureau of Investigation ("CBI"). Pursuant to it, CBI re-registered FIR No.13 of 2018, which is sought to be quashed.

4. Learned Senior Counsel for the petitioner would submit that initially, when FIR No.13 of 2018, at Police Station Rajpur was lodged against the petitioner, he filed a writ petition in which interim protection was granted. After investigation, chargesheet was filed against co-accused and the petitioner has been shown as a witness. It is submitted that the writ petition filed by the petitioner was dismissed as infructuous because at that stage a statement was given on behalf of the State that chargesheet has been filed and no material was found against the petitioner and he was

exonerated. It is argued that the same protection may continue to be given to the petitioner.

5. It is a petition under Article 226 of the Constitution of India. Generally, if an FIR discloses commission of any offences, no interference is warranted. The principle of law, on this point has been laid down by the Hon'ble Supreme Court in the case of State of Haryana and Others Vs. Bhajan Lal and Others, 1992 Supp (1) SCC 335. In Para 102, the Hon'ble Supreme Court illustratively gave the list of circumstances under which interference in this jurisdiction may be made. It is as hereunder:-

**“102.** 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.

6. It is admitted case that initially when the FIR No.13 of 2018 was filed at Police Station Rajpur, investigation was carried out and chargesheet was submitted against various persons. In fact, the chargesheet, which was submitted against co-accused Gopal Goenka reveals that investigation was still pending against other accused. This chargesheet itself records that chargesheet had already been filed against Heera Singh Bisht and Vijay Singh Bisht. This chargesheet does not reveal that the petitioner was exonerated then. Although fact remains that in this chargesheet, at Serial No.26, the petitioner is shown as a witness. It cannot be said that the FIR does not disclose commission of any offence. Successive chargesheets have been filed against three accused, as revealed in the

chargesheet filed against co-accused Gopal Goenka. Thereafter, the State of Uttarakhand decided to get the matter investigated by the CBI and Government of India issued a notification on 27.12.2022. Consequent to it, the FIR No.13 of 2018, Police Station Rajpur, was re-registered by the CBI. Investigation has been transferred to CBI. There is no reason to make any interference.

7. Learned Senior Counsel would submit that even the original FIR does not disclose any offence. This argument has less merit for acceptance at this stage because, as stated, based on the same FIR, i.e. FIR No.13 of 2018, Police Station Rajpur, police has investigated the matter and filed chargesheet against three persons including co-accused Gopal Goenka, in whose chargesheet, the Investigating Officer has recorded that investigation is still pending against other co-accused.

8. Insofar as protection is concerned, if petitioner apprehends that he may be arrested, he may seek such remedy, as is permissible under law. But, this may not be a ground to entertain the instant writ petition.

9. Having considered, this Court is of the view that there is no reason to make any interference. Accordingly, the

petition deserves to be dismissed, at the stage of admission itself.

10. The petition is dismissed *in limine*.

(Ravindra Maithani, J.)

28.02.2023

Ravi Bisht