

HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (Criminal) No. 1051 of 2023

Sachin ChoudharyPetitioner

Versus

State of Uttarakhand and othersRespondents

Present:-

Ms. Abhilasha Belwal, Advocate for the petitioner.
Ms. Sangeeta Bhardwaj, Brief Holder for the State of
Uttarakhand/respondent nos.1 and 2.
Mr. Alok Kumar, Advocate for respondent no.3.

JUDGMENT

Hon'ble Ravindra Maithani, J. (Oral)

The challenge in this petition is made to an FIR No.451 of 2023 (Case Crime No.703 of 2023), dated 17.07.2023, under Sections 147, 149, 332, 353, 504, 506 IPC and Sections 51(a) of The Disaster Management Act, 2005, Police Station Kotwali Roorkee, District Haridwar.

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

3. According to the FIR on 16.07.2023, the informant, who is the respondent no.3, had gone for some rescue work at 11:30 late in the evening. According to the FIR, he was abused and assaulted, due to which, he sustained injuries, he was also threatened to life. The FIR records that, in fact, the petitioner, who is a local

councillor and some of his friends had sit on the Astha Light and Pump set, which were taken at the place to drain the water and they obstructed the informant in discharging of his duties, who works as a Kanoongo (“a Revenue Officer”).

4. Learned counsel for the petitioner would submit that there no medical evidence on record as alleged in the FIR; the FIR was lodged under the political pressure; the police has been threatening the petitioner to send him behind the bars; the informant and the police are hand in gloves and are determined to send the petitioner to jail.

5. Learned counsel for the petitioner would submit that the petitioner is a councillor; there is no occasion to commit such offence; there were some verbal clash, but no offence as stated in the FIR had ever been committed by the petitioner.

6. It is also argued that the petitioner has never been given any notice under Section 41 of the Code of Criminal Procedure, 1973 (“the Code”); one of the co-accused had been given a notice, who is cooperating in

the investigation now, he is on bail given by the court below.

7. It is a petition under Article 226 of the Constitution of India for quashing an FIR. If FIR discloses commission of offences, generally no interference is warranted unless there are compelling circumstances to do so.

8. The scope under Article 226 of the Constitution of India is much wide, but also guided by the separate principles of law as laid down by the Hon'ble Supreme Court in umpteen number of cases. The jurisdiction is exercised to make such orders as may be necessary to give effect to any order passed by the court or to prevent abuse of process of any court or otherwise to secure the ends of justice.

9. In the case of State of Haryana and Others Vs. Bhajan Lal and Others, 1992 Supp (1) SCC 335, the Hon'ble Supreme Court has illustrated the list of the circumstances under which the jurisdiction under Section 482 of the Code may be exercised. In paragraph 102 of the judgment, the Hon'ble Supreme Court observed 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.”

10. The FIR in the instant case reveals that the informant, who is a public servant working as a Revenue Officer (Kanoongo) had gone at a place to drain the water for solving the disaster relating issue. He had got some lights and some pump sets, but according to the FIR, the petitioner and others persons threatened, abused, assaulted the informant to life. The FIR discloses commission of offences. What is its truthfulness and credibility, it will fall for scrutiny during the investigation

or trial, as the case may be. This Court straightway will not examine the truthfulness or credibility of the averments, as made in the FIR. Therefore, this Court does not find any reason to interfere in this petition. Accordingly, the petition deserves to be dismissed at the stage of admission itself.

11. The petition is dismissed *in limine*.

(Ravindra Maithani, J.)
31.07.2023

Sanjay