

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA

19th JUNE, 2024

CRIMINAL MISCELLANEOUS APPLICATION NO.141 OF 2021

Ravindra BrahamchariApplicant

Versus

State of Uttarakhand and AnotherRespondents

Counsel for the Applicant : Mr. Ramji Srivastava, Advocate.

Counsel for the State : Mr. Pratiroop Pandey, AGA
(through video conferencing)
assisted by Mr. Rakesh Negi,
Brief Holder.

Counsel for the Respondent: Mr. Yash Mishra, Advocate.
No.2- Informant

Hon'ble Alok Kumar Verma,J.

The applicant – accused Ravindra Brahamchari has invoked the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 (in short, "Code") to quash the entire proceedings of Criminal Case No.518 of 2020, "State vs. Ravindra Brahamchari", pending before the Court of Judicial Magistrate, Narendra Nagar, District Tehri Garhwal.

2. The case of the prosecution is that Sachcha Vedic Sansthan was formed in the year, 1973. The patron of the said Sansthan was Swami Hansraj. The said Sansthan was registered on 08.07.1981 in the office of the Registrar, Firms and Chit Funds, Dehradun. Swami Hansraj died on

23.10.2011. On 07.11.2011, at the time of Sodashi, the present applicant – Ravindra Brahamchari, who was removed from the post of the driver of the Sansthan, produced a will stating that Maharaj ji had declared him as his heir and custodian of his property. In relation to the said forged will, an FIR was lodged against the applicant at Muni-Ki-Reti police station, which was registered under Sections 420, 467, 468 and Section 471 of the Indian Penal Code, 1860 (in short, "IPC") and two civil suits were filed against him with the relief of perpetual injunction. When the signature of Maharaj ji was examined, the said will was found to be fake. The said civil suits were decided in favour of the respondent no.2, against which two civil appeals were filed. The said Civil Appeals (Civil Appeal No.06 of 2016 and Civil Appeal No.07 of 2016) were decided vide judgment and decree dated 14.12.2017, whereby the judgment and decree, passed by learned Trial Court, were set aside and the matter was remitted back to the Trial Court for fresh decision.

3. The applicant filed two Miscellaneous Appeals against the remand order, in which the stay orders were passed by this Court. Thereafter, the applicant had withdrawn both the appeals. The applicant formed a new Committee on 03.09.2013 and got it registered from the Registrar Office, Dehradun. Applicant lodged an FIR on 04.10.2016 that papers of his old Committee had fallen on the way. Applicant, along with a false affidavit, put his signature on the balance sheet for

the year, 2013-2014, which was filed by Surendra Mittal, the respondent no.2, and filed it before the Deputy Registrar Office, Dehradun with an undertaking that remaining balance sheet would be filed within two months. During the course of the investigation, it was found that the applicant had registered his Society on the basis of forged document, therefore, a charge-sheet has been filed against him before the Trial Court.

4. The First Information Report was lodged by Surendra Mittal, the respondent no.2, on 22.01.2019.

5. Subsequent to the submission of the charge-sheet, the learned Judicial Magistrate, Narendra Nagar, District Tehri Garhwal took cognizance and passed the summoning order against the applicant under Sections 420, 467, 468 and Section 471 IPC.

6. Heard Mr. Ramji Srivastava, learned counsel for the applicant, Mr. Pratiroop Pandey, learned AGA through video conferencing assisted by Mr. Rakesh Negi, learned Brief Holder for the State and Mr. Yash Mishra, learned counsel for the respondent no.2.

7. Mr. Ramji Srivastava, Advocate, contended that Swami Hansraj ji Maharaj, the Owner and Sanrakshak of Sachcha Vedic Sansthan, had executed a registered will dated 30.08.2010 in favour of the applicant in view of the services rendered by him as his disciple. Swami Hansraj ji Maharaj died on 23.10.2011. Thereafter, on the basis of the will dated

30.08.2010, applicant became Sanrakshak of the said Society, registered under the provisions of the Societies Registration Act, 1860. On 18.11.2011, the said Society was renewed for further period of 5 years consisting of 21 members and thereafter got it renewed from time to time. On 25.01.2012, the respondent no.2 lodged an FIR (FIR No.03 of 2012) against the applicant, which was registered under Sections 420, 467, 468, 471 and Section 120B IPC in relation to the execution of the will. The respondent no.2 started interfering in the operation of the Society. Therefore, he being Sanrakshak of the Society dissolved the Society and got the bank accounts of the Society frozen.

8. Mr. Ramji Srivastava, Advocate, argued that the respondent no.2 filed a suit for cancellation of will dated 30.08.2010 and also filed another suit seeking permanent injunction. Both the suits were decreed and the Trial Court had declared the will as null and void and restrained the applicant for functioning the Society. The applicant preferred two Civil Appeals (Civil Appeal No.06 of 2016 and Civil Appeal No.07 of 2016) which was decided on 14.12.2017, whereby the judgment and decree, passed by the Trial Court were set aside and the matter was remitted back to the Trial Court. Against the said order of remand, the applicant preferred two appeals (AO No.276 of 2017 and AO No.277 of 2017) before this Court. The effect and operation of the orders of the Appellate Court were stayed by this Court. Later on, the said

Appeals, filed before this Court, were withdrawn by the applicant. Both the Original Suits are pending before the Trial Court. The applicant's Society was registered on 04.10.2016 for 5 years. Against the aforesaid registration, the respondent no.2 preferred an Appeal before the Commissioner, Garhwal Division, which was dismissed vide order dated 03.05.2018. The said order, passed by Commissioner, has attained finality. The applicant's driver lodged an FIR (FIR No.114 of 2012) against the respondent no.2. The said FIR was registered under Sections 356, 504 and Section 506 IPC. The Investigating Officer had filed a closure report in the said matter. The learned Trial Court had rejected the closure report and summoned the respondent no.2 to face the trial. An FIR against 17 persons including the respondent no.2 was lodged by the applicant on 29.10.2013. The said FIR (FIR No.349 of 2013) was registered under Sections 420, 467, 468, 471, 120B and Section 352 IPC. Initially, a charge-sheet was filed in the said matter, however, the matter was re-investigated in compliance of the order of the Senior Superintendent of Police, thereafter, the Investigating Officer had filed a closure report. A probate petition has also been filed by the applicant, which is pending.

9. Mr. Ramji Srivastava, Advocate, further contended that the respondent no.2 lodged the impugned First Information Report No.18 of 2019 against the applicant with

almost similar allegations as contained in the First Information Report No.03 of 2012.

10. Mr. Ramji Srivastava, Advocate, further argued that as far as the allegations that the applicant formed a new Society and also constituted an Executive Committee of the Society against the order passed by this Court is concerned, the same does not constitute any offence. The proper remedy available with the respondent no.2 was to initiate contempt proceedings but not a criminal prosecution.

11. Mr. Ramji Srivastava, Advocate, contended that so far as the second allegations made against the applicant that the applicant got registered a Society on 04.10.2016 on the basis of false affidavit and forged balance sheet are concerned, the Society has been registered by the competent Authority in accordance with law and which was upheld by learned Commissioner in an Appeal, filed by the respondent no.2. The respondent no.2 by way of an Appeal (Appeal No.04 of 2016-2017) challenged the order dated 04.10.2016, by which, the Registrar renewed the Society of the applicant. The said appeal was dismissed vide order dated 03.05.2018, which has attained finality. Therefore, the second allegation is also baseless and no prosecution can be initiated on the basis of the same allegations.

12. It has been submitted by Mr. Ramji Srivastava, Advocate, that the dispute regarding the genuineness of the

said will is still pending before the District Judge in two Civil Appeals. Therefore, it cannot be said that the applicant has committed any crime of preparing forged will and it is a settled principle of law that in case the dispute pending between the parties is of purely in civil nature, then no criminal proceedings can be initiated. In support of the said submissions, Mr. Ramji Srivastava, Advocate, has relied upon the judgments of the Hon'ble Supreme Court, passed in **"Paramjeet Batra vs. State of Uttarakhand and Others"**, **(2013) 11 SCC 673** and **Randheer Singh vs. State of Uttar Pradesh and Others (2021) 14 SCC 626**.

13. Mr. Ramji Srivastava, Advocate, argued that the impugned FIR is in fact second FIR which has been lodged with almost same set of allegations as contained in the FIR dated 25.01.2012, therefore, the impugned FIR is barred by Article 20(2) of the Constitution of India and Section 300 of the Code. In support of his submissions, he has relied upon a judgment of the Hon'ble Supreme Court, passed in **"T.T. Antony vs. State of Kerala"**, **2001 SCC (Cri) 1048**.

14. Mr. Ramji Srivastava, Advocate, further argued that the respondent no.2 has lodged the impugned FIR with the malafide intention and the said FIR is result of counter blast of various criminal proceedings, lodged against the respondent no.2 by the applicant, and, no prima facie case is established against the present applicant.

15. Mr. Pratiroop Pandey, learned counsel appearing for the State, has opposed the submissions of Mr. Ramji Srivastava, Advocate. He argued that from perusal of the evidence, collected during the investigation, it is found that the applicant was involved in the present matter.

16. Mr. Yash Mishra, Advocate, appearing for the respondent no.2 - informant of the First Information Report No.18 of 2019, contended that the First Information Report No.03 of 2012 was registered in relation to forging and fabricating the will dated 30.08.2010 for which the applicant was convicted vide judgment dated 17.12.2022, passed by learned Chief Judicial Magistrate, Tehri Garhwal. The First Information Report No.18 of 2019 of the present matter has been registered for submission of fake, forged and fabricated balance sheet, Profit and Loss statement and FCRA statement 10B before the Sub-Registrar, Dehradun during renewal of the Society. Therefore, it is quite clear that the FIR of the present case is based on a new set of facts and not based on old set of allegations as alleged in the previous FIR. Therefore, there is no bar for the respondent no.2 to lodge the First Information Report No.18 of 2019 (FIR of the present matter). In support of his submission, Mr. Yash Mishra, Advocate has relied upon a judgment of the Hon'ble Supreme Court, passed in "**Om Prakash Singh vs. The State of Bihar and Others**", (2018) 9 SCC 440.

17. Mr. Yash Mishra, Advocate, further argued that the present case does not fall under anyone of the categories of cases formulated by the Hon'ble Supreme Court in "**State of Haryana and Others vs. Bhajan Lal**", 1992 Supp. (1) SCC 335.

18. Section 482 of the Code envisages three circumstances in which the inherent jurisdiction may be exercised, namely, "to give effect to an order under the Code, or, to prevent abuse of the process of any Court, or, to secure the ends of justice.

19. Section 482 of the Code reads as follows: -

"482. Saving of inherent power of High Court. - Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. "

20. This inherent jurisdiction though wide should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases to do real and substantial justice. While exercising jurisdiction under this section, the Court does not function as a Court of Appeal or Revision. Therefore, quashing of charge-sheet or setting aside the summoning order on the appreciation of evidence is not justified.

21. The scope of Section 482 of the Code has been considered by the Hon'ble Supreme Court in various judgments.

22. In **Madhu Limaya Vs. State of Maharashtra, 1978 AIR 47**, the Hon'ble Supreme Court has held that the following principles would govern the exercise of inherent jurisdiction of the High Court – (1) Power is not to be resorted to, if there is specific provision in Code for redress of grievances of aggrieved party. (2) It should be exercised sparingly to prevent abuse of process of any Court or otherwise to secure ends of justice. (3) It should not be exercised against the express bar of the law engrafted in any other provision of the Code.

23. In **Pepsi Food Limited vs. Special Judicial Magistrate and Others, 1998 (36) ACC 20**, the Hon'ble Supreme Court has observed that 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.

24. In **Lee Kun Hee and Others vs. State of U.P. and Others, JT 2012 (2) SC 237**, the Hon'ble Supreme Court held that the Court in exercise of its jurisdiction under Section 482 of the Code cannot go into the truth or otherwise of the allegations and appreciate evidence, if any, available on record.

25. In **Shakson Belthissor vs. State of Kerala and another, (2009) 14 SCC 466**, the Hon'ble Supreme Court observed,

“The scope and power of quashing a first information report and charge-sheet under Section 482 of the CrPC is well settled. The said power is

exercised by the court to prevent abuse of the process of law and court but such a power could be exercised only when the complaint filed by the complainant or the charge-sheet filed by the police did not disclose any offence or when the said complaint is found to be frivolous, vexatious or oppressive. A number of decisions have been rendered by this Court on the aforesaid issue wherein the law relating to quashing of a complaint has been succinctly laid down."

26. In State of Haryana v. Bhajan Lal (1992)

Supp.(1) SCC 335, the Hon'ble Supreme Court summarized the legal position by laying the following guidelines to be followed by High Courts in exercise of its jurisdiction: -

"(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."

27. In **Kaptan Singh vs. State of Uttar Pradesh and others, 2021 SCC OnLine SC 580**, the Hon'ble Supreme Court observed that in the case of **Dhruvaram Murlidhar Sonar vs. State of Maharashtra, (2019) 18 SCC 191** after considering the decisions of **Bhajan Lal** (Supra), it is held that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 Cr.P.C. though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 Cr.P.C. Similar view has been expressed in the case of **C.B.I. vs. Arvind Khanna, (2019) 10 SCC 686**, **Telangana vs. Managipet, (2019) 19 SCC 87** and in the case of **XYZ vs. State of Gujarat, (2019) 10 SCC 337**.

28. Mr. Ramji Srivastava, Advocate, argued that the offence alleged to have occurred in both the FIRs i.e. FIR No.03 of 2012 and FIR No.18 of 2019 are the same and thus, the second FIR will not be permissible.

29. The First Information Report No.03 of 2012 was registered in relation to forging and fabricating the will dated 30.08.2010 for which the present applicant was convicted vide judgment dated 17.12.2022, passed by learned Chief Judicial Magistrate, Tehri Garhwal, whereas during the renewal of the Society, fake, forged and fabricated documents were filed hence the present FIR i.e. FIR No.18 of 2019 has been registered on the new set of facts. True, there cannot be a second FIR in respect of the same offence. But, the FIR of the present matter i.e FIR No.18 of 2019 is not connected with the offence alleged in the FIR No.03 of 2012.

30. After carefully analyzing, this Court is of the view that the decision of **T.T. Antony (supra)**, cited by Mr. Ramji Srivastava, Advocate, has no relevance to the facts of the present case.

31. Mr. Ramji Srivastava, Advocate, contended that against the order of renewal of the Society of the applicant, the respondent no.2 preferred an appeal before the Commissioner, Garhwal Division. The said appeal was dismissed by the Commissioner vide its order dated 03.05.2018. Under Section 12D (c) of the Societies Registration Act, 1860, as inserted by the State of Uttar Pradesh and as applicable in the State of Uttarakhand, the Registrar is given power to cancel the registration of any Society on the ground that the registration or the certificate of renewal has been obtained by misrepresentation or fraud. No

application under the said provision was filed by the respondent no.2 – informant of the present FIR, and, it is quite clear that the present dispute is of civil nature, which has been given the color of criminal offence. In these circumstances, the entire proceedings of the present criminal case deserve to be quashed. In support of his submissions, Mr. Ramji Srivastava, Advocate has relied upon the following decisions: -

(i) **Paramjeet Batra vs. State of Uttarakhand and Others (2013) 11 SCC 673.**

(ii) **Randheer Singh vs. State of Uttar Pradesh and Others (2021) 14 SCC 626.**

32. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy was available to the informant of the present FIR that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations disclose the criminal offence or not.

33. In **Paramjeet Batra (supra)**, it was found that the dispute was essentially about the profit of the hotel business and its ownership. In **Randheer Singh (supra)**, it was found that no criminal case was made out.

34. Mr. Ramji Srivastava, Advocate, further argued that the signature for comparison was not taken in accordance with law, therefore, the report of the Forensic Science Laboratory cannot be relied upon. He further submitted that the FIR of the present case is result of counter blast of various criminal

proceedings, lodged against the respondent no.2 by the present applicant. He further argued that the criminal proceedings cannot be used as an instrument of harassment to pressurize the accused and that too where no prima facie case is established against the applicant. In support of his submission, he has relied upon the decision of the Hon'ble Supreme Court, passed in "**Inder Mohan Goswami and Another vs. State of Uttaranchal and Others, (2007) 12 SCC 1.**

35. In the present matter, the learned Judicial Magistrate took the cognizance after considering the evidence available on the record. When exercising jurisdiction under Section 482 of the Code, this Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of its accusation would not be sustained. This is the function of the Trial Court. The correctness of the allegations can be adjudged only at the trial when evidence is adduced. This Court cannot hold a parallel trial in an Application under Section 482 of the Code. At this stage, it is not for this Court to enter into factual arena and decide whether the allegations are correct or whether the same are a counter – blast to any proceedings instituted by the applicant. This Court would not also examine the genuineness of the allegations since this Court does not function as a Court of Appeal or Revision, while exercising its jurisdiction under Section 482 of the Code. In this matter it

cannot be said that there are no allegations against the applicant. Apart this, learned counsel for the applicant could not able to show at this stage that allegations 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 applicant.

36. Therefore, in the light of the facts and circumstances of the present case, the present case does not fall in any category set out by the Hon'ble Supreme Court in **State of Haryana and Others vs. Bhajan Lal (supra)**.

37. Accordingly, the prayer for quashing the entire proceedings of Criminal Case No.518 of 2020, "State vs. Ravindra Brahamchari", pending before the Court of Judicial Magistrate, Narendra Nagar, District Tehri Garhwal, is refused.

38. Since, the criminal case has to be tried, I make it clear that the observations made earlier are only for the disposal of this Application, filed under Section 482 of the Code. These observations will not influence the trial court while deciding the case.

39. With the aforesaid direction, the Application, filed under Section 482 of the Code, is dismissed.

ALOK KUMAR VERMA, J.