

Sl. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			C482 No.596 of 2019 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. Dheeraj Joshi, Advocate, holding brief of Mr. Abhishek Verma, Advocate, for the applicant. Mr. V.K. Jemini, D.A.G., for the State of Uttarakhand. The present applicant is facing the proceedings of the Criminal Case No.429 of 2018, "State Vs. Ashok and others", wherein, he has been summoned to be tried for the offences under sections 379, 504 and 506 of IPC, by the court of 1st Judicial Magistrate, Roorkee, District Haridwar. The entire argument, which has been extended by the learned counsel for the applicant is based upon the factual appreciation of the facts with regards to the ownership of the land! with regards to the plea of <i>alibi</i>! with regards to his involvement in commission of the offence! with regards to the revenue entries pertaining to the ownership! which has been recorded; with regards to that it happens to be a civil dispute! and also with regards to the delayed registration of the complaint, there cannot be an FIR.

			In order to summarize the argument extended by the learned counsel for the applicant, this Court need not to venture upon all these arguments, except for the fact that in the FIR itself, it shows that there is specific allegation levelled by the complainant that the applicant has stolen 13 popular trees from the land belonging to the complainant. The ownership of which stand reflected from the Khatauni entries, which has been placed on record. Apart from the fact that if the chargesheet is taken into consideration, the Investigating Officer has recorded the findings, that the offence as complained of stand established against the present applicant for the reason being that in the chargesheet thus submitted, the Investigating Officer has observed that after going through the records, and the report, which was submitted by the Investigating Officer, the allegation about the commission of the offence under section 379 of IPC, was established to be made out against the applicant on the basis of the report of the Police officials, who have recorded the statement before the Investigating Officer. So far as the plea of <i>alibi</i> and non involvement of the present applicant in commission of the offence is concerned, that
--	--	--	--

		cannot be a plea which could be appreciated by the court exercising powers under section 482 of CrPC, as it will be depending upon the determination on appreciation of the evidence, which is not the subject matter which could be scrutinized under 482 of CrPC. The Government Advocate was called upon with regards to the propriety of the summoning order, he answer the same in the context of the observations made by the Investigating Officer, and the consequential report which was submitted, was scrutinized by the court of 1st Judicial Magistrate, Roorkee, District Haridwar, while issuing the summoning order against the present applicant, and thus, he submits that the entire proceedings are not vitiated, as it has been argued by the learned counsel for the applicant. Since apparently the commission of the offence under section 379 of IPC, is shown to have been made out because the theory of stealing 13 popular trees from the land of the complainant was a fact, which found established, after appreciation of the evidence by the Investigating Officer. All these aspects are required to be factually gone into by the trial court when the trial of the Criminal Case No.429 of 2018,
--	--	---

			“State Vs. Ashok and others”, is taken up on its merit. Hence, this Court is not inclined to interfere in the C482 application, the same would accordingly dismissed. (Sharad Kumar Sharma, J.) 22.08.2023 NR
--	--	--	---

--	--	--	--