

HIGH COURT OF UTTARAKHAND
AT NAINITAL

C482 Application No. 2002 of 2023

Tej Bahadur

... Applicant

Vs.

State of Uttarakhand and Another

... Respondents

Advocate: Mrs. Pushpa Joshi, Senior Advocate, assisted by Ms. Chetna Latwal, Advocate, for the applicant
Mr. S.C. Dumka, AGA, for the State

Hon'ble Sharad Kumar Sharma, J.

The brief genesis of this C482 Application commences from the registration of the FIR, being FIR No. 307 dated 26.08.2022, by the complainant respondent No. 2 herein, as against the present applicant, who is the father-in-law of the present applicant, for his alleged involvement in commission of offence under Sections 323, 376, 506 and 511 of IPC.

2. There are certain facts, which have been mentioned, as to the manner in which the offence has been committed, as narrated in the FIR and subsequently established too by the Chargesheet, as submitted by the Investigating Officer, this Court is deliberately not making any detailed analysis, except for the argument extended by the learned Senior Counsel for the applicant to substantiate, that the instant case happens to be an abuse of process, and this Court should exercise its inherent powers under Section 482 of CrPC to curb an abuse of process.

3. The argument extended by the learned Senior Counsel for the applicant could be summarized in the following manner:-

(i) She has harped upon the fact, that no credibility could be attached to the allegations leveled in the FIR, for the reason being, that for the incident is of 10.08.2022 and the FIR which was being registered on 26.08.2022, itself would attach malice to the proceedings and registration of the FIR would be deemed to be as an afterthought.

(ii) It is further submitted by the learned Senior Counsel for the applicant that the CCTV footage it was available according to her, but the Investigating Officer has not taken care of the same and hence too, no sanctity could be attached to the proceedings drawn against the present applicant, who is 78 years of age.

(iii) That the photograph, which she has appended with the instant C482 Application, she has attempted to show that the allegations leveled in the FIR could not be culled out from the perusal of the photographs to show presence of the accused, which has been placed on record, because no such incident had chanced on the date i.e. of 10.08.2022, as narrated in the aforesaid FIR.

(iv) She has further submitted that the wife of the applicant, who is a handicapped person and was on the wheelchair, has not said anything with regard to the said incident dated 10.08.2022.

(v) She refers to that the neighbours have submitted their affidavits before the Investigating Officer, whereby the neighbours have supported the case of the present applicant, contending thereof that no offence as such, on 10.08.2022, had ever chanced and the Investigating Officer has erred at law, by not recording any finding on the same, and the impact, which it carried to the investigation, qua the affidavits submitted by the neighbours.

(vi) The learned Senior Counsel for the applicant has further elaborated her argument that it is absolutely a false case, which has been developed, in order to dilute the matrimonial dispute and the claim of the complainant was raised by the complainant against the applicant herein, over the land, which belonged to the present applicant.

(vii) She further submits that the ocular test or the evidence, which is there on record may not have a precedence over the actual incident, which has chanced on 10.08.2022, hence based on that, she has submitted that it is hardly an improbable story, which has been developed by the prosecution by registering FIR for the involvement of the present applicant in commission of offence under Sections 323, 376 and 506 of IPC.

3. This Court feels it apt, to answer the arguments extended by the learned Senior Counsel for the applicant, in the following manner. **Firstly**, that what impact the delayed registration of the FIR would have, besides the fact, that its circumstances under which the delayed FIR has been registered, would still be a subject matter of trial, but merely because of the fact that the FIR has been registered at a belated stage, that in itself may not be an exclusive reason for interference under C482, because the determination of its impact of a delayed FIR would always be depending upon an appreciation of facts and evidence as to under what circumstances the complainant was constraint to register the FIR at a belated stage. Because there are various psychological processes, which are to be tested and assessed on evidence.

4. In fact, this ground in itself do not entail an appreciation of any question of law, as such, but rather to arrive at a law, a fact is to first appreciated, which is not the scope of C482 under Criminal Procedure Code.

5. **Secondly**, she has contended that the Investigating Officer has erred at law in carrying the investigation by not placing reliance on CCTV footage, when the same was available. A defective investigation is yet an aspect which is still required to be established by leading evidence as the defect, which has caused in leading the investigation in absence of considering of CCTV footage by Investigation Officer, what bearing will it have over the trial. Alone the aspect of defective evidence and the conduct of the Investigating Officer, yet again cannot be isolatedly determined by the Court under C482, merely because of the arguments being extended by the learned Senior Counsel for the applicant, defending the prosecution of the applicant, without the same being supported by any logical reasoning as to how it effected the investigation.

6. **Thirdly**, she has relied upon certain photographs in support of her contention, that owing to the photographs, which have been appended with the instant C482 Application. With all due reverence at my command, the tenacity of argument, extended by the learned Senior Counsel for the applicant, to such an extent at appreciate photographs as evidence, at the stage of C482, it was as if this Court was called upon to appreciate an evidence to make out a case to determine as to whether the case is made out against the present applicant or not which not be the scope for this Court to hold trial or mini-trial.

7. As far as the appreciations of photographs are concerned, under the Evidence Act, photographs exclusively cannot be read in evidence until and unless it is satisfied with certain legally prescribed preconditions provided under the Evidence Act. It is contended that, in order to satisfy the aforesaid parameters of the Evidence Act, the documents which have been appended along with the C482 Application, will suffice the purpose to override the legal implications of the Evidence Act, in order to enable the Court to read the photographs in evidence.

8. The Hon'ble Apex Court, in a judgment, as reported in **2023 SCC Online SC 379, Central Bureau of Investigation Vs. Aryan Singh etc.**, has laid down the precedents within which the Court exercising powers under Section 482 of CrPC, has to limit itself for making out a case for the applicant to approach in a proceeding under Section 482 of CrPC. The Hon'ble Apex Court has observed that it has been a cardinal principle of law, that the C482 jurisdiction is not a platform to be utilised as a platform of trial, wherein evidence is required to be appreciated by conducting a mini-trial to establish that no offence is made out against an applicant. The relevant para 10 of the said judgment, is extracted hereunder:-

“10. From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers **under Section 482 Cr. P.C., the Court is not required to conduct the mini trial.** The High Court in the common impugned judgment and order has observed that the charges against the accused

are not proved. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr. P.C., the Court has a very limited jurisdiction and is required to consider "whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not".

9. Similar was the view taken by the Hon'ble Apex Court in an earlier judgment, as reported in **2021 SCC Online SC 1222, State of Odisha Vs. Pratima Mohanty Etc.,** wherein the Hon'ble Apex Court, once again, in para 16, has observed that the scope of exercising powers under Section 482 of CrPC is very much circumscribed and limited only to the extent, that where there is an apparent flaw of law. Flaw of fact is not a subject matter to be scrutinized under C482, and the Hon'ble Apex Court, in its clear terms has observed that C482 is not to be utilised as a substitute of trial or mini trial, because any observations to be made in C482 proceedings while appreciating an evidence, will have an adverse affect on the trial itself and hence, the High Court should restrict itself to only answer the question of law. But, when a fact is required to be appreciated, in order to assign reasons of abuse of process, the High Court should refrain itself from recording any finding on the facts of the case to arrive at a conclusion that where there is an abuse of process or not. Relevant para 16 is extracted hereunder:-

"16. It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per settled proposition of law while examining an FIR/complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather

than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under Section 482 Cr.P.C. when after a thorough investigation the charge-sheet has been filed. At the stage of discharge and/or considering the application under Section 482 Cr.P.C. the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducting the mini-trial. As held by this Court the powers under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court.”

10. **Fourthly**, the learned Senior Counsel for the applicant has argued, which yet again is a basic fact, which has occurred at the time when the incident has chanced i.e. on 10.08.2022 with regard to what bearing will the case have, because of the presence of the wife of the present applicant. Presence of the wife was under what conditions, at what place, was she there in the residence? is yet again an aspect, which could be better decided only after appreciation of evidence and that too keeping in mind, that in the case at hand, the wife of the applicant was a handicapped person, who was on the wheelchair and her presence in the close proximity of the place of incident will itself was a fact which was required to be considered at the stage of trial.

11. The learned Senior Counsel for the applicant has further elaborated her argument, that the neighbours have furnished the affidavits in support of the applicant, showing ignorance of the applicant of not to be involved in commission of offence, as complaint of, and the Investigating Officer has not considered the affidavits submitted by the neighbours. This may be an aspect, which can be said that it was a defective investigation. But then the aspect of defective investigation it is always circumscribed by satisfying the condition as to in what

manner the investigation was defective and what bearing would the affidavits would have over the observations made by the Investigating Officer, in the Chargesheet. It cannot be isolatedly construed, that merely because the Investigating Officer has not considered the affidavits submitted by the neighbours. The entire criminal proceedings drawn against the applicant are vitiated in the eyes of law, because there could be a possibility of affidavits being procured, and given out of utter sympathy, which is not the scope to be analysed in C482 Application.

12. **Lastly**, the learned Senior Counsel for the applicant argues that it's a false case, because the complainant was already under litigation with her husband in a matrimonial dispute, coupled with the fact and more importantly, which has been harped upon by the learned Senior Counsel, that it was basically the interest of the immovable property, which the complainant had because of which the FIR has been maliciously registered.

13. In fact, there is no such finding in the documents on record about the so-called alleged theory of interest over the immovable property by the complainant, which was belonging to the applicant, but even if that be so, yet again by what parameters, that would have an effect on the Criminal Case is yet again a matter to be considered by the trial Court and not by the purposes of conducting a pre trial by appreciation of evidence at the stage of C482 proceedings.

14. The learned Senior Counsel for the applicant, though by way of repetition has said, that the prosecution story cannot be believed with, because of the delayed registration

of FIR. In answer to it, this Court is of the view, that for a female to register an FIR for an offence under Section 376 of IPC, there are multiple circumstances, which have to be preconceived and carefully considered by the complainant about the probable social consequences, which it could follow i.e. the social, as well as personal. Thus, the delayed FIR isolatedly will have no vital bearing to attach any taboo to the criminal proceedings drawn against the present applicant.

15. Since the instant C482 Application, as argued by the learned Senior Counsel for the applicant is circumscribed by considering of the facts, which is not the scope under Section 482, this Court declines to interfere, the C482 Application is, accordingly, dismissed.

(Sharad Kumar Sharma, J.)

10.10.2023