

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			C482 No2131 of 2023 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. Sagar Kothari, learned counsel for the applicant. In the instant C482 Application, the applicant has put a challenge to the proceedings of Complaint Case No.3160 of 2023, "Girish Chaudhary Vs. Himanshu Chaudhary", in which the present applicant has been summoned by an order of 25.09.2023 for being tried for the offences under Sections 447 and 427 of the IPC. There are two fold arguments of the learned counsel for the applicant. He contends that on a simplicitor reading of the complaint as instituted by the respondent on 18.04.2023 before the Court of Additional Judicial Magistrate, Dehradun, no apparent offence of mischief falling under Section 425 of the IPC could be made out, for the purpose to attract an offence under Section 427 of the IPC. Secondly, he argues that the registration of the complaint case is counterblast to the proceedings under Order 39 Rule 2A of the CPC as it was drawn by him in Misc. Case No.40 of 2023, "Himanshu Chaudhary Vs. Girish

		Chaudhary and Others”, which was emanating from Original Suit No.912 of 2020. This Court feels it apt to deal with the second argument first, before answering the first argument, as to whether it is a mischief under Section 425 of the IPC or not. The issue of counterblast could be only when the principal proceedings is being taken as to be an impediment, but here the proceedings under Order 39 Rule 2A of the CPC, is a misc. proceedings of violation of temporary injunction under Order 39 Rule 1 and 2 of the CPC as granted on 24.12.2021. A misc. proceeding should not be confused with the principal proceedings of Suit No.40 of 2023. Besides that, the institution of proceedings under Order 39 Rule 2A of the CPC for violation of the interim injunction dated 24.12.2021, is only a penal in nature, the issue which is to be decided by the learned Civil Court which is seized with the proceedings of under Order 39 Rule 2A of the CPC. May be institution of the proceedings of a Misc. Case under Order 39 Rule 2A of the CPC will not grant an immunity to the applicant that for his criminal act, no complaint could be registered against him. Hence, registration of a subsequent complaint on 18.04.2023, would not be a
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		counterblast, for the reason being, that in case if the allegations levelled in the complaint itself is taken into consideration, particularly, as referred to in paragraph no.2, 3 of the complaint, whether the actual complaint was to the effect that the complainant had broken the lock of the shop and the house and had damaged the same on 04.04.2023. Issue would be as to whether the act of complainant of the incident of 04.04.2023 would be a mischief under Section 425 of the IPC itself or not. Section 425 of the IPC reads as under:- <i>“Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits “mischief”.</i> That to constitute an act of mischief, there has to be an intent to, with knowledge to cause damage or loss. Paragraph no.2 speaks about the action taken on 04.04.2023 where the allegation are about barging into the shop and the residence by breaking the lock and the shutters. Whether actually the incident of mischief as complained of in paragraph no.2 has chanced or not, is a subject which has to be decided by the trial
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			Court, but the action complained in paragraph no.2 to be read with contents of paragraph no.3 of the complaint would be a mischief, because it has resulted into causing of a damage by the untoward act of the applicant, which was complained of by filing an application under Section 156(3) of the Cr.P.C. For the reasons aforesaid, I am not inclined to interfere in the C482 Application and the same would, accordingly, stand dismissed. (Sharad Kumar Sharma, J.) 01.11.2023 Sukhbant
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