



HIGH COURT OF UTTARAKHAND AT NAINITAL

Reserved Judgment

**Criminal Misc. Application No.786 of 2014
(Under Section 482 of Cr.P.C.)**

Ravi Dev & Anr. Petitioners

Vs.

State of Uttarakhand & Anr. Respondents

Present:-

Mr. Arvind Vashishta, Senior Advocate assisted by Mr. Hemant Mahara, Advocate for the petitioners
Mr. G.S. Sandhu, Additional Advocate General with Mrs. Mamta Joshi, Brief Holder for the State.
Mr. D.S. Patni, Senior Advocate assisted by Mr. Dharmendra Barthwal, Advocate for respondent no.2

**(2) Writ Petition (Criminal) No.249 of 2024
(Under Article 226 of Constitution of India)**

Deepankur Mittal & Anr. Petitioners

Vs.

State of Uttarakhand & Anr. Respondents

**(3) Writ Petition (Criminal) No.318 of 2024
(Under Article 226 of Constitution of India)**

Mahendra Singh Lekhi & Ors. Petitioners

Vs.

State of Uttarakhand & Anr. Respondents

Present:-

Mr. D.S. Patni, Senior Advocate assisted by Mr. Dharmendra Barthwal, Advocate for the petitioners
Mr. G.S. Sandhu, Additional Advocate General with Ms. Mamta Joshi, Brief Holder for the State
Mr. Vipul Sharma, Advocate for respondent no.3



JUDGMENT

Hon'ble Vivek Bharti Sharma, J.

Though these three petitions viz. C482 No.786 of 2014, WPCRL No.249 of 2024 and WPCRL No.318 of 2024 were heard and reserved by this Court on different dates but since the issues involved in these petitions arise out of the same incident involving same question of facts and law, therefore, for better adjudication of the case, these petitions are being decided by this common judgment.

2. By means of C482 No.786 of 2014, petitioners seek quashing of charge-sheet dated 07.03.2014 and the summoning order dated 17.06.2014 as well as the entire proceedings of Criminal Case No.1904 of 2014 "*State vs. Ravi Dev Anand and others*", under Sections 452, 325, 354, 147, 148, 323, 427, 504, 506 of IPC pending in the court of Judicial Magistrate-I, Dehradun.

3. Factual matrix of the case is that respondent no.2 Subhash Mittal (*since deceased*) lodged FIR No.201 of 2012 at P.S. Nehru Colony, District Dehradun against the petitioners and others alleging that on 11.10.2012 when the respondent no.2 and his family members and relatives were entering the house i.e. House No.G-11, Race Course, Dehradun, (*hereinafter referred as 'property in question'*), some anti-social elements came from outside shouting slogans and attacked the respondent no.2/complainant and his family members with sticks, punches and chairs and some of them climbed the roof and put up a board of Vishwa Hindu Parishad (V.H.P.); that, the petitioners and other accused persons attacked



the respondent no.2/complainant and his family and tried to take forcible possession of the property in question; that, one V.H.P. worker wearing black sunglasses broke the windowpane of car of his son-in-law; that, he (*complainant*) identified these persons who had caused injuries to the complainant, his family members and servants.

4. It was also alleged that at the same time Vishwa Hindu Parishad (*hereinafter to be referred as "VHP"*) personnel called the rioters on the spot through phone and threatened to kill the respondent no.2/complainant and his family and tried to oust them from the property in question; that, the Police officials and the City Magistrate also arrived at the spot and saved their lives; *that, the complainant was apprehending the incident long before, therefore, he had already sent a Fax and Email to the D.G.P. and S.S.P. regarding his programme requesting for police protection.*

5. After investigation of the case, charge-sheet was submitted against the petitioners under Sections 452, 325, 354, 147, 148, 323, 427, 504 and 506 of IPC whereon the learned Magistrate, by the impugned order dated 17.06.2014, took the cognizance and registered it as Criminal Case No.1904 of 2014 summoning the petitioners by impugned order to face trial under the aforesaid sections.

6. Heard.

7. **Submissions on behalf of petitioners**

a. The learned Senior Counsel for the petitioners would submit that the true genesis of the incident is that the



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property in question is the property of *VHP* by virtue of a Gift Deed executed and registered by its owners on 01.10.2012; that, on 11.10.2012 when the petitioner no.2 was convening meeting of volunteers of *VHP* in the property in question at noon, respondent no.2/complainant along with 10-20 other persons with all preparations came at the property in question and started abusing and beating him and other volunteers with plan to take forcible possession of the property in question; that, the complainant and his associates were armed with weapons and they assaulted petitioner no.1 and other volunteers; that, to report this incident of criminal act petitioner no.2 lodged a FIR at P.S. Nehru Colony, Dehradun under Sections 147, 307, 323, 504, 506 of IPC.

He would further submit that the present FIR under challenge, is nothing but a counter blast to the FIR lodged by the petitioner no.2 against respondent no.2 and his associates.

- b. That, initially the name of Shri Ravi Mittal, brother of respondent no.2, was recorded as owner of property in question. Shri Ravi Mittal along with his wife Late Smt. Mahendra Devi were in possession of the property in question till death of Late Shri Ravi Mittal and after his death his wife i.e. Late Shri Mahendra Devi was in possession thereof.
- c. That Late Shri Ravi Mittal was residing in front portion of property in question and the rear portion was let out to tenants from time to time; that, Shri Ravi Mittal expired on 10.12.2011 and after his death his wife Smt. Mahendra Devi continued to reside in the



property in question in her own right until her demise i.e. 26.09.2012. Late Shri Ravi Mittal and Late Smt. Mahendra Devi had deep faith in Hinduism; that, she bequeathed the property in question to her children by way of Will dated 02.05.2012; that, the children of Late Smt. Mahendra Devi were also very religious like their mother having immense faith in Hindu tenets and were impressed with religious activities of VHP, therefore, out of their religiosity and honoring wishes of their mother Late Mahendra Devi, *they gifted the property in question to VHP vide Gift Deed registered with Sub Registrar II, Dehradun, Book No.1, Volume 4429 pages 87 to 196 at Serial No.8146 and vide duly registered gift deed the property was transferred and mutated in the name of VHP.*

- d. That, respondent no.2/complainant is permanent resident of Delhi and has always been residing there but he made a nefarious design to take the possession of the property in question considering himself as rightful person to get the same with help of his influence and contacts in local police as he had retired from C.F.S.L., C.B.I. New Delhi; that, respondent no.2 came at the property in question on 11.10.2012 along with his associates to execute this plan and, with the help of police administration, attempted to dispossess petitioner no.2 and VHP from the property in question and proceedings u/s 145 of Cr.P.C. were initiated.
- e. That, in order to preempt any action by the petitioners against them, the respondent no.2, with his influence in the police, registered the present FIR by procuring fake medical report of some persons who never had sustained any injuries; that, this fact is quite evident



from the F.I.R. by respondent no.2 where no time of incident is stated.

- f. That the biased attitude of the Investigating Officers is evident from the fact that admittedly the incident took place at the same date, time and place but the IO, without investigating the matter in a proper, unbiased and professional manner, submitted charge-sheet against the petitioners and other volunteers of VHP but, on other hand, submitted final report against the actual offenders i.e. the respondent no.2 and his associates.
- g. That, the respondent no.2 by exercising his influence upon the local police managed in initiating the proceedings u/s 145 Cr.P.C.
- h. That, prior to the incident the respondent no.2 had written an email (*Annexure-10*) to DGP on 02.10.2012 that *"I propose to come to Dehradun on October 9, 2012 along with my wife, sisters, daughter, son and children to stay in our own house"*; that, the clout and influence of respondent no.2/complainant was so strong that the police immediately took note of it (*Annexure-10*) and marked to I.G. Crime (L/O) for action.
- i. That, this email clearly shows that on the date of incident the respondent no.2 had hatched a nefarious design to come at the property in question with his associates and take forcible possession of it from the VHP by ousting its volunteers.
- j. That, the investigation of the case was done by the Investigating Officer in a very shoddy, biased and partisan manner; that, in the FIR lodged by the



petitioner no.1 against respondent no.2, despite there being cogent and credible material, injuries and evidences on record against the respondent no.2 and his associates, final report was submitted, whereas, in the present FIR lodged against the petitioners, charge-sheet based on concocted facts and fabricated evidences was submitted.

k. That the learned Magistrate, without appreciating the evidence on record, passed the impugned summoning order. He would further submit that a mere perusal of the impugned summoning order would show that the same has been passed in a cyclostyled format without application of judicial mind, hence, the charge-sheet as well as the impugning summoning order is liable to be quashed. In support of this submission, learned senior counsel would place reliance on the following judgments:-

(i) *Sunil Bharti Mittal vs. Central Bureau of Investigation (2015) 4 SCC 609*

“48. Sine Qua Non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect.....”.

(ii) *C482 No.894 of 2019 Haneef Malik v. State of Uttarakhand, decided on 05.09.2022*



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“....Partly, he may be correct; but, so far as the summoning order in the instant case is concerned, once it’s a formatted order and merely it refers to that the Court has taken into consideration the entire material, that itself may not be an inference that the material which has been considered was in the context of the case for which the summoning order has been issued.”

(iii) C482 No.2109 of 2023 Himanshu Badoni vs. State of Uttarakhand and another, decided on 01.11.2023.

“17. In that eventuality, and for the reasons already recorded above in the light of the settled principles of law, in the context of as to what does literal connotation of word ‘cognizance’ would have under the criminal law, the formatted summoning order which has been issued without application of mind, would not be sustainable.....”

1. It was also the submission of learned senior counsel for the petitioners that it is the respondent no.2 and his cahoots who were the aggressors and the petitioners and other volunteers only exercised their right of private defence of life and property.

8. Along with the petition, petitioners filed the following documents:-

- (i) Copy of Civil Suit filed by respondent no.2 as **Annexure-1.**
- (ii) FIR of Case Crime No.202/2012 u/s 147, 307, 323, 504 and 506 of IPC lodged by petitioner no.2



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against respondent no.1 Subhash Mittal, Prashant, Himanshu, Harendra Rawat and 10-20 other unknown persons on 11.10.2012 at 07:30 pm at P.S. Nehru Colony, Dehradun as **Annexure-2** with allegations that on 11.10.2012 in between 12-12.30 pm respondent no.2 and his men had come at the office of VHP where the petitioner no.2 was sitting along with other volunteers in a meeting and attacked petitioners and other volunteers of VHP with sticks and other weapons, in order to take forcible possession of the property in question, inflicted severe injuries to petitioner no.2 and other persons sitting there in which petitioner no.2 sustained severe injuries on his head for which he got seven stitches on his head.

- (iii) FIR No.201/2012 lodged against the petitioner under challenge in the present petition as **Annexure-4.**
- (iv) Charge-sheet dated 07.03.2014 under challenge filed by the police against the petitioners as **Annexure-6.**
- (v) The cognizance order dated 17.6.2014 as **Annexure-7.**
- (vi) Final report of closure of the case in Crime No.202/2012 lodged on the complaint of the petitioner no.2 against respondent no.2 and his cahoots as **Annexure-8.**
- (vii) Protest petition filed by the petitioner no.2 against closure/final report as **Annexure-9.**
- (viii) The intimation dated 3rd October 2012 sent by email at 02.11 pm by respondent no.2/complainant at official email address of DGP (*dgc-police-ua@nic.in*)



wherein respondent no.2 wrote to the police that he proposes to come to Dehradun on October 9, 2012 along with his wife, sisters and other family members to stay in their house and the petitioners may attempt to block his entry in the property in question.

Counter Affidavit by Respondent No.2

9. Respondent no.2 filed the counter affidavit dated 07.09.2019 through his power of attorney Mahendra Lekhi with following documents as Annexures:-

- (i) His power of attorney as **Annexure-1**
- (ii) Charge-sheet filed against the petitioners and others as **Annexure-2**.
- (iii) The order dated 22.04.2016 passed by C.J.M., Dehradun in criminal case no.1904/2014 as **Annexure-3** whereby the application filed by the Prosecution u/s 321 of Cr.P.C. was rejected.
- (iv) Copy of letter dated 13.10.2016 of District Magistrate Dehradun thereby according permission to file the criminal revision as **Annexure-4**.
- (v) The application filed by Joint Director (*Law*) to District Judge, Dehradun for transferring the revision as **Annexure-5**.

Submissions on behalf of respondent no.2

10(a) Learned senior counsel appearing for the respondent no.2/complainant would submit that the present FIR discloses the commission of offence and the



same is corroborated by medical reports and ocular evidences of the witnesses; that, there is ample evidence on record which clearly establishes that a *prima facie* case is made out against the petitioners/accused.

(b) Learned senior counsel appearing for the complainant would further submit that the law regarding quashing of charge-sheet is well settled. The Hon'ble Apex court has time and again held that a criminal case can be quashed only in exceptional circumstances where the allegations made in the FIR 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.

(c) He would further submit that it is well settled that where the basic ingredients of an offence is made out in FIR or charge-sheet, then the High Court should not exercise its extraordinary jurisdiction u/s 482 of Cr.P.C. and the trial should be allowed to run its course. To bolster his submissions, learned senior counsel would place reliance *in re* "*Sanju Rajan Nayar vs. Jayaraj & Anr. 2024 SCC OnLine SC 582*" and "*Ruchir Ratogi vs. Pankaj Rastogi & Ors., 2023 SCC Online SC 1360*".

(d) Learned senior counsel for the respondent no.2 also argued that the petitioners with their political influence managed to get the application filed u/s 321 of Cr.P.C. in the court for withdrawal of prosecution but the same was disallowed by the court of C.J.M., Dehradun; that, against the rejection order passed by the C.J.M., the District Magistrate had passed the orders to file revision, which shows the political influence and pressure of the petitioners and the same political



influence was used by the petitioners belatedly for taking forcible possession of the property in question.

11. In rebuttal, learned senior counsel for the petitioners would submit that the facts are other way round; that, the respondent no.2 was the Principal Scientific Officer in C.F.S.L, C.B.I., New Delhi and he had strong connections and influence in the local police which he had exercised to his benefit; that, *this fact is evident from the fact that even before the occurrence of the alleged incident on 11.10.2012 respondent no.2 had started making machinations to make a strong case in his favour* and in furtherance of same he had sent the email on 02.10.2012 to the DGP, Dehradun stating that the petitioners may block his entry in the property in question.

He would further submit that prior to the incident, the respondent no.2 and none of his family members were acquainted or known to the petitioners for the reason that there was no occasion to meet each other as the respondent no.2 and his other associates were permanent resident of Delhi since decades, then how respondent no.2 could name them in his email.

Counsel for the petitioners would further submit that, rather, the petitioners and other volunteers of the VHP were attacked by respondent no.2 and the goons called by him to take possession of the property in question by using force and violence; that, they were well prepared and equipped with lethal weapons and inflicted injuries to petitioner no.2 and in treatment of which he got 7 stitches on his head.



12. Learned senior counsel for the petitioners would further argue that respondent no.2 in the civil suit stated that Ravi Mittal was ailing and suffering from cancer and heart disease and was 90% visually handicapped; that, if that was the condition of Late Shri Ravi Mittal then who was looking after the business of Ravi Mittal after the death of his father in 1996; that, in fact Late Smt. Mahendra Devi was not the attendant but was the legally wedded wife of Ravi Mittal and Ravi Mittal was not so much visually handicapped because of glaucoma but he was looking after his business and discharging his day-to-day work comfortably and living with Late Smt. Mahendra Devi as legally wedded husband and wife; that, during this whole period this fact was very much known not only to respondent no.2, but all in the Society, sisters and other family members of Ravi Mittal, therefore, during the lifetime of Late Smt. Mahendra Devi, respondent no.2/complainant or his sisters did not raise any objection that why she was residing with Ravi Mittal because they knew that she was the legally wedded wife of their brother Ravi Mittal; *that, this is quite evident from the fact that after death of Late Shri Ravi Mittal, the former Chief Minister of Uttarakhand Shri Nityanand Swami visited him and the same was reported in newspaper that Shri Nityanand Swami visited and consoled his wife Smt. Mahendra Devi; that, Late Shri Ravi Mittal in an application for bail in a criminal case (Annexure Nos.1 and 2 of Counter Affidavit filed in WP(CRL) No.249 of 2024) stated that Late Smt. Mahendra Devi is his wife; that, in a letter by UCO Bank Late Mahendra Devi was addressed as wife of Late Ravi Mittal; that, but after the death of Ravi Mittal, his brother i.e. the respondent no.2/complainant and his sisters became*



greedy; that, after death of Late Smt. Mahendra Devi when they came to know that the children of Late Smt. Mahendra Devi out of religious fervor and faith towards Sanatan Dharma donated the property in question to VHP, respondent no.2 hatched the conspiracy to take possession of the property by force with help of their goons.

He would further submit that the only fault of the petitioners was that they resisted the unlawful acts of respondent and his associates in exercise of their right to private defence of their lives and property to frustrate the attempt to dispossess the petitioners from the property in question.

13. Learned counsel for the petitioners would further argue that at the time when incident took place then the ruling dispensation in the State of Uttarakhand and Centre was the Congress which was always suspicious, rather against the activities of VHP because of their political views and ideological differences, therefore, it was not the political influence of the petitioners but the influence which the respondent no.2 exerted on the local police being the Principal Scientific Officer in C.F.S.L., C.B.I., New Delhi.

14. Considered and perused the entire material available on record.

15. The case of the petitioners is that Late Smt. Mahendra Devi was the wife of Late Shri Ravi Mittal and after the death of Shri Ravi Mittal on 10.12.2011, she was the owner and in possession of the property in question G-11, Race Course, Dehradun. On 26.09.2012, Smt. Mahendra Devi also died, however, before her death



she had bequeathed this property to her children. On 01.10.2012, children of Late Smt. Mahendra Devi gifted this property to VHP by registered gift deed executed in the office of Sub Registrar Dehradun and since then VHP was the absolute owner and in possession of the property in question; that, on 11.10.2012 when the petitioner no.2 was convening the meeting of the volunteers of the VHP at around 12-12.30 pm the respondent no.2 along with 10-20 persons forcibly tried to enter the property in question i.e. in the office of VHP to take forcible possession of the same by inflicting severe injuries upon him and other volunteers.

16. *This is the admitted case of the respondent no.2 that Late Smt. Mahendra Devi was residing in the property in question since long. It is also admitted to respondent no.2 that he has filed a suit for relief of declaration, etc. (Annexure-1) in which he stated that his brother Sri Ravi Mittal expired on 10.12.2011 and till his death his brother was residing in the property in question (as stated in bottom 4 lines of para-16 of plaint Annexure-1). It is also admitted case of respondent no.2 in his plaint that after the death of Shri Ravi Mittal, Smt. Mahendra Devi continued to live in the property in question till her death on 26.09.2012. This means, that possession of Late Mahendra Devi on the property in question was settled.*

17. Although the case of respondent no.2 is that Late Smt. Mahendra Devi was not the legally wedded wife of his brother Ravi Mittal, rather she was employed as an attendant to look after their parents till they were alive and after their death she was employed to look after his ailing brother Ravi Mittal who was suffering from several



ailments viz. Glucoma, heart disease and cancer, *but, it is the fact that Late Smt. Mahendra Devi was residing and in possession of the property in question till her death and respondent no.2 or any of his family member raised no objection to her possession.*

18. It is the case of respondent no.2 that Late Smt. Mahendra Devi was residing in the property in question because their brother Shri Ravi Mittal was suffering from various ailments and was living alone and respondent no.2 and his other family members were living outside Dehradun and taking undue advantage of this situation, Smt. Mahendra Devi projected herself to be the legally wedded wife of Late Shri Ravi Mittal. *However, the learned senior counsel appearing for respondent no.2 could not explain the reason why Late Smt. Mahendra Devi was allowed to live in the property in question after the death of his brother Late Shri Ravi Mittal on 10.12.2011 and if Late Ravi Mittal was visually impaired and suffering from serious diseases then who was looking after his business.*

19. It is not the case of respondent no.2 that after the death of his brother Late Shri Ravi Mittal they had asked Smt. Mahendra Devi to vacate the property in question and initiated any legal proceedings against her in her lifetime to get her ousted from it. It is also an admitted fact that property was mutated and challenge was made by respondent no.2 only in the year 2013 i.e. months after the incident.

20. Admittedly, it is only after the death of Late Smt. Mahendra Devi that respondent no.2 wrote letter to



DGP, Uttarakhand, as mentioned above, stating that he intends to come to his alleged house i.e. the property in question.

21. Be it as it may. The important question which falls for consideration of this Court is that whether on the date of incident the petitioners were in peaceful settled possession over the property in dispute and which party was the aggressor in the incident in question.

22. As observed above, it is the admitted case of the parties that Late Smt. Mahendra Devi was in peaceful possession of the property in question till her death on 26.09.2012 and during the period between death of Late Shri Ravi Mittal and her death *i.e. between 10.12.2011 and 26.09.2012*, the respondent no.2 or any of his family members did not raise any objection to her possession or initiated any legal proceedings to oust her. *It is inexplicable that if at all, respondent no.2 and his family members were in possession of property in question then what was the need for respondent no.2 to send an email to Uttarakhand Police informing that he proposes to come to the property in question on 09.10.2012 and the petitioners may block his entry.*

23. It is also the moot question that how just after five days of the death of Late Smt. Mahendra Devi, respondent no.2 came to know the fact that the property in question has come in the hands of VHP and petitioner no.1 and other volunteers of VHP would not allow him to enter and would block his entry to his own house on 09.10.2012 when he intends to come. *It is also pertinent to note that in this email he stated that the petitioner and*



other volunteers of the VHP had made several attacks on previous occasions also but he did not mention on what date these attempts were made and why any complaint was not made. Non-mentioning of date of any previous attempt makes the allegations of respondent no.2 absurd and incongruent, hence, unbelievable.

After retirement, respondent no.2 was posted as the Executive Director, Premier Forensic Science Institute, he must be knowing the importance of dates and events very well. If any similar attempt was made earlier also, prior to 02.10.2012, then why any complaint was not lodged by respondent no.2 or any of his family members against the petitioners or any other persons.

24. Perusal of Email dated 02.10.2012 shows that respondent no.2 had given intimation to the police that he proposes to come on 9th October, 2012 at this property then what happened on 09.10.2012, whether he had come or not on that day. If he had not come then what were the reasons and if he had come on 09.10.2012 then what happened on that day. *No explanation of these facts strengthens the case of petitioners that the respondents were not in possession of the property in question on 11.10.2012 and the Email was sent just for peshbandi.*

The F.I.R. No.201/2011 reads that his servant Govind and Shafiq were present in property in question, if this was the case, then how could petitioner block the entry of respondent no.2, etc. into the property, as apprehended well in advance in the email.

25. In para-17 of the plaint of the civil suit (*Annexure-1*) which was filed after eight months of the



incident in question, respondent no.2 stated that after retirement from the post of Principal Scientific Officer in C.F.S.L., C.B.I. New Delhi in 2005, he continued to live in Delhi and established “*Premier Forensic Science Institute*” at New Delhi, albeit, used to come to Dehradun occasionally. In para-19, it is also stated that the property in question was mutated either in the name of Late Smt. Mahendra Devi or her children against which he filed a municipal appeal. It is also stated by respondent no.2 in para-20 of the plaint that respondent no.2 and his three sisters were living outside Dehradun. *The plausible inference of all these above admitted facts is that respondent no.2 was not in possession of the property in question on the date of incident.*

26. It is also important to note that ***in the email dated 02.10.2012 it is specifically stated that the petitioners along with other persons were camping in the property in question and were using Indica Car for commuting which conclusively proves the fact that VHP was in settled possession of the property in question through their volunteers.***

27. Medical report of petitioner no.2 (*Annexure-3*) clearly shows that there was a lacerated wound of 5 x 0.5 cm on the back of head although what treatment was given is not written but there is no reason to disbelieve, in absence of any denial by the respondent no.2 in the counter affidavit, that for the treatment of this wound seven stitches were given to petitioner no.2.

28. As regards the submission made by learned senior counsel for the petitioners that the petitioners



resisted respondent no.2 and his associates in exercise of their right of private defence, this Court finds force in this submission. Email dated 02.10.2024 sent by respondent no.2 makes it crystal clear that before coming to Dehradun the respondent no.2 was well prepared and well equipped with the plan to dispossess petitioners from property in question by use of force and violence and in order to save life and property in question, the petitioners exercised their right to private defence.

29. Section 97 of IPC (*Penal Law as then was*) would be relevant to be quoted, which reads as under:-

“97. Right of private defence of the body and of property.—

Every person has a right, subject to the restrictions contained in section 99, to defend—

First.— His own body, and the body of any other person, against any offence affecting the human body;

Secondly.— The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.”

30. In **Munshi Ram and others vs. Delhi Administration (1967) SCC Online SC 80** has held as under:-

“18. In Jai Dev v. State of Punjab this Court while dealing with the right of private defence of property and person observed (at p. 500)

"In appreciating the validity of the appellants' argument, it would be necessary to recall the basic assumptions underlying the law of self-defence. In a well ordered civilised society it is generally assumed that the State would take care of the persons and properties of individual citizens and that normally it is the



function of the State to afford protection to such persons and their properties. This, however, does not mean that a person suddenly called upon to face an assault must run away and thus protect himself. He is entitled to resist the attack and defend himself. The same is the position if he has to meet an attack on his property. In other words, where an individual citizen or his property is faced with a danger and immediate aid from the State machinery is not readily available, the individual citizen is entitled to protect himself and his property. That being so, it is a necessary corollary to the doctrine of private defence that the violence which the citizen defending himself or his property is entitled to use must not be unduly disproportionate to the injury which is to be averted or which is reasonably apprehended and should not exceed its legitimate purpose. The exercise of the right of private defence must never be vindictive or malicious.

19. In Horam and others v. Rex⁴, a division bench of the Allahabad High Court observed that where a trespasser enters upon the land of another, the person in whom the rightful possession is vested, while the trespasser is in the process of acquiring possession, may turn the trespasser out of the land by force and if in doing so, he inflicts such injuries on the trespasser as are warranted by the situation, he commits no offence. His action would be covered by the principle of private defence embodied in Sections 96 to 105 IPC.”



31. From the careful and circumspect consideration of all the facts discussed above cumulatively, this Court is of the opinion that the F.I.R. filed against the petitioners by respondent no.2 is nothing but misuse of process of law.

32. **This gives inevitable conclusion that Late Smt. Mahendra Devi was in settled possession of property in question and after her death, consequently her children were in settled possession by way of her WILL and through them V.H.P. came in unobstructed and settled possession of the property in question by virtue of the Registered Gift Deed.**

33. Now coming to the ambit and scope of jurisdiction under Section 528 of Bhartiya Nagarik Suraksha Sanhita (*hereinafter to be referred as B.N.S.S.*) vested in the High Court. Section 528 of B.N.S.S. saves the inherent power 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.

Before promulgation of B.N.S.S., Section 482 of Criminal Procedure Code was holding this field. This Section 528 of B.N.S.S. is pari-materia to Section 482 of Cr.P.C. Therefore, for interpreting the scope of Section 528 of B.N.S.S. the reference and law laid down on Section 482 Cr.P.C. are relevant.

34. In the case of **State of Haryana and others vs. Bhajan Lal and others, 1992 Supreme Court Cases (Cri) 426**, Hon'ble Apex Court has enunciated that the High Court can exercise inherent jurisdiction for



quashing a criminal proceeding, only when the allegations made in the FIR/ complaint does not disclose the commission of any offence and makes out no case against the accused. Hon'ble Apex Court has categorized cases by way of illustration wherein such power could be exercised to prevent abuse of the process of law:-

- (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 or personal grudge.*

35. In **State of Andhra Pradesh v. Golconda Linga Swamy, (2004) 6 SCC 522**, Hon'ble Apex Court elaborated on the types of materials the High Court can assess to quash an FIR. Relevant paragraph of this judgment is quoted hereunder:-

"5. ...Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the



materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

36. In **Mahmood Ali and Ors. vs. State of U.P. Criminal Appeal No.2341 of 2023, decided on 08.08.2023**, Hon’ble Apex Court has observed as under:-

*“12. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, **then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings.** The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. **In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending***



circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/ registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

37. From the discussion made above, it is quite clear that the entire case set up by the respondent no.2/complainant appears to be fabricated and concocted. The allegations made in the FIR and the charge-sheet are so absurd and highly improbable that no prudent person can ever reach to the conclusion that the incident could have taken place as is alleged in the charge-sheet and the FIR. That being the position, I am of the opinion that the instant criminal proceedings are maliciously instituted against the petitioners by the respondent no.2/complainant with an ulterior motive for wreaking vengeance on the petitioners and with a view to dispossess the petitioners from the property in question.

38. In the result, petition u/s 482 of Cr.P.C. is allowed. Charge-sheet dated 07.03.2014, the summoning



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order dated 17.06.2014 and the entire proceedings of Criminal Case No.1904 of 2014 “*State vs. Ravi Dev Anand and others*”, under Sections 452, 325, 354, 147, 148, 323, 427, 504, 506 of IPC pending in the court of Judicial Magistrate-I, Dehradun, are hereby quashed.

Writ Petition (Criminal) No.249 of 2024 & Writ Petition (Criminal) No.318 of 2024

39. By means of Writ Petition (Criminal) No.249 of 2024 and Writ Petition (Criminal) No.318 of 2024, petitioners seek quashing of FIR/Case Crime No.202 of 2012 dated 11.10.2012 registered at P.S. Nehru Colony, District Dehradun, under Sections 147, 307, 323, 504 & 506 of IPC with prayer as under:-

- (i) *Issue a writ, order or direction in the nature of certiorari quashing the impugned FIR dated 11.10.2012 being Case Crime No.202 of 2012, registered under sections 147, 307, 323, 504 & 506 of IPC, Police Station Nehru Colony, District Dehradun (annexed as Annexure no.1 to this writ petition).*
- (ii) *Issue a writ, order or direction in the nature of mandamus commanding and directing the respondent no.2 not to arrest the petitioners in connection with impugned FIR dated 11.10.2012 being Case Crime No.202 of 2012, for the offences punishable under section 147, 307, 323, 504 & 506 of IPC, Police Station Nehru Colony, District Dehradun (annexed as Annexure no.1 to this writ petition).*

40. The allegations in this above cross FIR registered against the petitioners by respondent no.3 is that respondent no.3/complainant is the volunteer of



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Vishwa Hindu Parishad (VHP) and like everyday he was sitting in his office situated at G-11, Race Course, Dehradun (*hereinafter referred to as "property in question"*) with other volunteers; that, on 11.10.2012 at about 12-12.30 pm petitioners and their associates entered the office with sticks and other weapons and threatened respondent no.3/complainant started to vacate the property in question; that, when the respondent no.3/complainant and other volunteers stopped the petitioners and their associates, they called 10-20 more armed people and started beating respondent no.3/complainant and other VHP workers; that, these people attacked the complainant on the head with a rod with the intention to kill him but the respondent no.3/complainant somehow saved himself from the attack, but the co-accused Subhash Mittal, standing behind the complainant, attacked him due to which the complainant fell down; that, these miscreants started kicking and punching the complainant; that, when Dinesh, Mahendra, Abhishek, Rajendra Rajput tried to save the complainant then petitioners and their associates attacked these persons also; that, the workers called the police but the said miscreants kept on vandalizing the place.

41. The matter was investigated whereafter the police filed the final report dated 13.05.2013; that, against the final report, respondent no.3/complainant preferred a protest petition on 17.07.2014, which was allowed by the Chief Judicial Magistrate, Dehradun, vide order dated 22.02.2016, which directed further investigation in the matter; that, the matter was further investigated but again final report was filed by the police on 22.10.2020. Thereafter, the State Government,



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through its letter dated 11.02.2021 written by Additional Secretary (*Home*), decided to get the investigation done by the CBCID and subsequently the said case was transferred to the Crime Research Bureau vide order dated 15.02.2021.

42. The petitioners in Writ Petition (Criminal) No.249 of 2024 also filed the following documents as annexures:-

- (i) Copy of FIR No.202 of 2012 lodged against the petitioners under Sections 147, 307, 323, 504 & 506 of IPC as **Annexure-1**.
- (ii) Copies of photographs as **Annexure-2**.
- (iii) Copy of FIR No.201 of 2012 lodged by petitioners against respondent no.3 at P.S. Nehru Colony, Dehradun and the charge-sheet under Section 452, 325, 354, 323, 147, 148, 506, 506, 427 & 34 of IPC as **Annexure-3**.
- (iv) Copy of final report dated 13.05.2013 as **Annexure-4**.
- (v) Copy of order dated 22.02.2016 passed on the protest petition as **Annexure-5**.
- (vi) Copy of letter dated 11.02.2021 written by Additional Secretary, Government of Uttarakhand as **Annexure-7**.
- (vii) Copy of order dated 15.02.2021 passed by Inspector General of Police, Uttarakhand as **Annexure-8**.
- (viii) Copy of notice dated 19.02.2021 issued by CBCID to the petitioners as **Annexure-9**.
- (ix) Copy of application dated 20.01.2023 filed by the petitioners under the RTI Act as **Annexure-10**.
- (x) Copy of information dated 03.02.2023 supplied to the petitioners by the Public Information



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Officer/Section Officer, Crime Investigation Department (CID), Dehradun as **Annexure-11**.

- (xi) Copy of orders dated 01.07.2021 and 01.11.2022 passed by this Court as **Annexures-12 & 13**.
- (xii) Copy of FIR No.0584 of 2023, Police Station Kotwali, Dehradun on 13.12.2023 under Section 420, 467, 468 and 471 of IPC as **Annexure-14**.

43. Counter affidavit is filed by respondent no.3 reiterating the allegations and facts as was stated in his Criminal Misc. Application (*u/s 482 of Cr.P.C.*) No.786 of 2014 for quashing the proceedings of Criminal Case No.1904 of 2014 of Cross F.I.R. No.201 of 2024 against respondent no.3 on the complaint of petitioners' father.

44. It is also stated in the counter affidavit that after the gift deed, the property in question is the headquarter of V.H.P. and respondent no.3 is a volunteer/worker of V.H.P.; that, V.H.P. is in peaceful possession of the said property in question by virtue of Registered Gift Deed since date of its execution; that, on 11.10.2012 when the petitioners along with others tried to take possession forcibly of said property and assaulted the complainant then the instant FIR was lodged against the petitioners.

45. **In para-20 of the counter affidavit, it also is stated that the second final report was filed on 22.10.2020 but the same was never accepted by the learned Magistrate and is still pending.**

46. Along with the counter affidavit, respondent no.3/complainant filed the following documents:-

- (i) Copy of bail application dated 10.08.2010 as **Annexure-1**.



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- (ii) Copy of order dated 10.08.2010 passed on the bail application as **Annexure-2**.
- (iii) Copy of voter list of Ward No.38 Nagar Nigam, Dehradun as **Annexure-3**.
- (iv) Copy of Voter List of Legislative Assembly, Doiwala as **Annexure-4**.
- (v) Copy of letter dated 06.03.2018 written by Senior Manager UCO Bank to Smt. Mahendra Devi as **Annexure-5**.
- (vi) Copies of obituary as well as the newspaper bills as **Annexure-6**.
- (vii) Copy of newspaper cutting dated 12.05.2012 published in Amar Ujala as **Annexure-7**.
- (viii) Copy of registered WILL dated 02.05.2012 as **Annexure-8**.
- (ix) Copy of Gift Deed dated 01.10.2012 as **Annexure-9**.
- (x) Copy of medical certificate of the applicant as **Annexure-10**.
- (xi) Order Sheet of Misc. Case No.147 of 2023 before the court of 2nd ACJM, Dehradun as **Annexure-11**.
- (xii) Copies of mutation entries of the properties belonging to Ravi Mittal as **Annexure-12**.
- (xiii) Copy of judgment dated 27.03.2021 as **Annexure-13**.

Submissions On Behalf Of Petitioners

47. Learned senior counsel appearing for the petitioners would submit that the petitioners' name does not figure in the FIR and only because of the political pressure and after the death of father of petitioner no.1, petitioners' names have been illegally dragged in the



impugned FIR amounting to gross abuse of process of law.

48. He would further submit that the present FIR lodged by the respondent no.3/complainant against the petitioners is nothing but counterblast to the FIR lodged by the father of petitioner no.1 against the respondent no.3/complainant, his father and others.

49. He would further submit that twice final report has been submitted in the matter but despite that the State Government, in its own wisdom, without assigning any reason, ordered for reinvestigation of the case pursuant to which investigation is again being conducted by the CBCID.

50. He would submit that the act of the respondent no.1-authorities in reopening the investigation despite submission of final report twice by the I.O. is unjustified and illegal and it amounts to abuse of process of law warranting the quashing of the FIR.

51. He would further submit that the Additional Secretary (Home) is not empowered to order further investigation/reinvestigation of a case by a separate agency. To bolster his submissions, he would place reliance on a judgment of Hon'ble Supreme Court in the case of **Bohatie Devi (dead) through LR vs. The State of U.P. & Ors. (2023) SCC Online Sc 525** and would refer para-22, which is quoted hereunder:-

"22. In any case, as it is a case of reinvestigation, the same is not permissible and that too by another agency without the prior permission of the learned Magistrate even while exercising the powers under Section 173(8)



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of the Cr.P.C. Under what authority of law, the Secretary (Home) has transferred the investigation to another agency and/or ordered further investigation by another agency is not pointed out and **that too at the instance of the accused on the grounds which as such can be said to be the defences of the accused which are required to be considered at the time of trial.** The case on behalf of the accused that as the Secretary (Home) is the head of the department and the further investigation was ordered by another agency on administrative side and therefore, the Secretary (Home) is justified in ordering further investigation by CBCID cannot be accepted. So far as the investigation is concerned under the scheme of the Cr.P.C, the Police Officer of the concerned Police Station, who is the investigating officer, has to investigate/further investigate the case under the supervision of Superintendent of Police. So far as the Secretary (Home) is concerned, he does not come into picture at all. If such powers are given to the Secretary (Home) in that case any accused who is already chargesheeted may approach the Secretary (Home) and may get an order of further investigation or reinvestigation by another agency and obtain the fresh report nullifying the earlier chargesheet and get himself discharged. If the accused is aggrieved by the chargesheet in that case, the remedy available to him would be either to file the quashing petition under Section 482 of Cr.P.C. and/or to move an appropriate application for discharge before the learned Magistrate and it is for the High Court and/or the learned Magistrate as the case may be, to quash criminal proceedings or discharge the accused. The Secretary (Home) and/or any accused who is already chargesheeted cannot be permitted to circumvent such provision. It is to be noted that in the present case, respondent No. 8 – accused earlier did file the quashing petition, but failed.

Submission of Respondent No.3



52. Per contra, learned counsel for respondent no.3 would submit that though second final report was also filed in the case but the same was never accepted by the Magistrate; that, the Additional Secretary (Home) is justified in ordering investigation by CBCID. To bolster his submissions, he would place reliance in the case of ***State of Bihar and another vs. J.A.C. Saldanha and others (1980) 1 SCC 554.***

53. He would further submit that the judgment of ***Bohatie Devi (supra)*** is not applicable to the facts of the present case and the same is also *per incuriam* as Two Judges Bench of Hon'ble Supreme Court in ***Bohatie Devi's case (supra)*** did not consider the judgment of Three Judges Bench of Hon'ble Supreme Court in ***J.A.C. Saldanha Case (supra)***.

54. Considered and perused the record of WPCRL No.249 of 2024 and WPCRL No.318 of 2024 circumspectly.

55. At very inception itself, it would be pertinent to revisit the prayer made by the petitioners in both the petitions. In WPCRL No.249 of 2024, as reproduced above, prayer is for issuance of writ or directions in the nature of certiorari to quash the FIR dated 11.10.2012 registered in Police Station, Nehru Colony, Dehradun and for a direction to respondent no.2 not to arrest the petitioners in connection with the same FIR. Similarly, in WPCRL No.318 of 2024, prayer is almost verbatim same. It is also important to note that the second final report has not been accepted and the protest application of respondent no.3/complainant is pending disposal. ***That is to say both these writ petitions are not filed***



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for quashing of the order passed by the Additional Secretary, Government of Uttarakhand dated 11.02.2021 (Annexure-7 of this petition) addressed to Director General of Police, Uttarakhand, thereby directing him to get the Case Crime No.202/2012 under sections 147, 307, 323, 504 & 506 of IPC, registered at Police Station Nehru Colony, District Dehradun reinvestigated by CBCID but under challenge is only the FIR NO.202/2012 and not the Annexure-7. Therefore, the only ground taken and submitted by learned Senior Counsel for the petitioners relying upon the law laid down in **Bohatie Devi Case (Supra)** is not applicable in the present facts and circumstances in view of the relief prayed for in these two writ petitions.

Moreover, Hon'ble Supreme Court in **Bohatie Devi's case (supra)** dealt with the situation where the mother of the co-accused, who had been charge-sheeted in a murder case and whose petition for quashing the charge-sheet had already been dismissed, filed an application before the Government whereupon the Secretary (*Home*) had transferred the investigation to the CBCID and the CBCID in its subsequent investigation virtually acquitted the co-accused i.e. son of Bohatie Devi thereby nullifying the charge-sheet against him on the basis of grounds which could have been the defences of the accused in the trial.

However, in the present case, the facts are entirely different. In the present case, the matter pertains to the incident of 11.10.2012 in which cross FIRs were registered. FIR/Case Crime No.202/2012 lodged against the petitioners and his associates was for their alleged



criminal act of using force to dispossess the respondent no.3 and his associates from the property in question, the possession of which they have got by virtue of Registered Gift Deed and the WILL.

In the present case, the application is not moved by the accused, but it is moved by the complainant who is not satisfied with the investigation carried out by the Police and final report was filed before the Magistrate.

It would also be apt to note that the judgment of Hon'ble Supreme Court in re ***State of Bihar and another vs. J.A.C. Saldanha and others (1980) 1 SCC 554*** was a Constitutional Bench Judgment delivered by three Judges Bench of Hon'ble Supreme Court whereas the judgment of ***Bohatie Devi (dead) through LR vs. The State of U.P. & Ors. (2023) SCC Online Sc 525*** was delivered by Two Judges Bench of Hon'ble Supreme Court.

56. In ***J.A.C. Saldanha case (supra)***, the Hon'ble Supreme Court dealt with a situation where some unscrupulous officers of Railway Department, in order to give benefit to one of the big business house of India TISCO, defrauded the Railway of its legitimate revenue and the case was registered and investigation was done by the Railway Police. Thereafter, the investigation was transferred to DIG of the Regular Police that virtually exonerated the employees of that business house. But, on the letter of some of the MLAs and MLCs of State of Bihar to the Chief Minister, the matter was directed on the direction of Chief Secretary of the State of Bihar to be reinvestigated by the Railway Police. As the officials of



that business house were uncomfortable with the investigation by the Railway police, they challenged the order of Chief Secretary. In this judgment, Hon’ble Supreme Court in para 6 and 10 observed formulated following issues:-

“6. Two substantial questions arise in these appeal : (1a) Whether the State Government was competent to direct further investigation in a criminal case in which a report was submitted by the investigating agency under section 173(2) of the Code of Criminal Procedure, 1973 (“Code” for short) to the Magistrate having jurisdiction to try the case?..... (2) Whether, when the investigation was in progress the High Court was justified in interfering with the investigation and prohibiting or precluding further investigation in exercise of its extraordinary jurisdiction under Article 226 of the Constitution?

.....

.....

10. The first question is whether the State Government was precluded from directing further investigation in the case in which one investigating officer had submitted a report under Section 173(2) of the Code but on which the Court had not passed any order?”

On these issues, the Hon’ble Supreme Court in para-13, 14 & 16 observed that:-

“13. It was, however, contended that State Government has no power to direct further investigation, that being the power of the officer in charge of a police station under sub-section (8) of Section 173 of the Code, or the power of the Magistrate to direct further investigation under sub-section (3) of Section 156, and, therefore, the State Government under orders of the Chief Minister was not competent to direct further investigation in the case.



14. *The State of Bihar is governed by the Indian Police Act, 1861, (“Act” for short), because it has not enacted any Police Act of its own. In Section 1 of the Act the word “Police” is defined to include all persons who shall be enrolled under the Act and the words “general police district” are defined to embrace any presidency, State or place, or any part of any presidency, State or place, in which the Act shall be ordered to take effect. Section 3 of the Indian Police Act provides as under:*

“3. The superintendence of the police throughout a general police district shall vest in and, shall be exercised by the State Government to which such district is subordinate; and except as authorized under the provisions of this Act, no person, officer or court shall be empowered by the State Government to supersede or control any police functionary.”

.....

“16. The general power of superintendence as conferred by Section 3 would comprehend the power to exercise effective control over the actions, performance and discharge of duties by the members of the police force throughout the general district. The word “superintendence” would imply administrative control enabling the authority enjoying such power to give directions to the subordinate to discharge its administrative duties and functions in the manner indicated in the order. It is only when a subordinate authority subject to superintendence is discharging duties and functions of a quasi-judicial character under a statute that the inhibition of abdication of such power can be invoked. But where the subordinate subject to such power of superintendence of the superior is discharging administrative and executive functions, obligations and duties, the power of superintendence would comprehend the authority to give directions to perform the duty in a certain manner, to refrain from performing one or the other duty, to direct someone else to perform the duty and no inhibition or limitation can be read in this power unless the section conferring such power prescribes one.....”



In para-17 of this judgment, Hon'ble Supreme Court further observed that:-

“17. The High Court construed the expression “superintendence” in Section 3 of the Act to mean “general supervision of the management of the police department and does not vest the State Government with authority to decide what the police alone is authorized to decide.” There is nothing in the Act to indicate such a narrow construction of the word 'superintendence'. Nothing was pointed out to us to put a narrow construction on this general power of superintendence conferred under the Act on the State Government and there is no justification for limiting the broad spectrum of power comprehended in power of superintendence. Accordingly superintendence would comprehend the power to direct further investigation if the circumstances so warrant and there is nothing in the Code providing to the contrary so as to limit or fetter this power. Sub-section (8) of Section 173 was pressed into service to show that the power of further investigation after the submission of a report under Section 173(2) would be with the officer in charge of a police station. Sub-section (8) of Section 173 is not the source of power of the State Government to direct further investigation. Section 173(8) enables an officer in charge of a police station to carry on further investigation even after a report under Section 173(2) is submitted to Court. But if State Government has otherwise power to direct further investigation it is neither curtailed, limited nor denied by Section 173(8), more so, when the State Government directs an officer superior in rank to an officer in charge of police station thereby enjoying all powers of an officer in charge of a police station to further investigate the case. Such a situation would be covered by the combined reading of Section 173(8) with Section 36 of the Code. Such power is claimed as flowing from the power of superintendence over police to direct a police officer to do or not to do a certain thing because at the stage of investigation the power is enjoyed as executive power untrammelled by the judiciary....”



After having made above observations, the Hon'ble Supreme Court further observed in para 22 & 25 observed that:-

“22. As pointed out above, if the Chief Secretary as the highest executive officer at the State level exercising power of superintendence over the police of the State posted in general police district would have powers to suggest change of investigating machinery in the circumstances disclosed in the letter dated May 11, 1977, of the D.I.G., Railway, the report of the Commissioner of South Chhotanagpur Division, and the complaint of MLAs/MLCs, his action could not be said to be without power or authority. In our opinion, if he had acted otherwise, a charge of inaction or failure or default in performance of his duty as the highest chief executive officer would be squarely laid at his door. He acted in the best tradition of the Chief executive officer in public interest and for vindication of truth and in an honest and unbiased manner.....”

25. There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounded duty to investigate into the offence and bring the offender to book.”

57. By reading of the Judgment of Hon'ble Supreme Court in re **Bohatie Devi case (supra)**, it appears that the learned counsels for the parties did not mention the judgment passed by Constitutional Bench of Hon'ble Supreme Court in **J.A.C. Saldanha case (supra)** and therefore it was not considered by the Hon'ble Supreme Court in **Bohatie Devi case (supra)**.



58. At this stage, it is opportune to refer the Uttarakhand Police Act, 2007 in the light of above observations and the law laid down by Hon'ble Supreme Court in **J.A.C. Saldanha (supra)**.

Section 19 of the Uttarakhand Police Act, 2007 (*hereinafter to be referred as the "Act"*) reads as under:-

"19. Superintendence over the Police Force

Notwithstanding anything contained in any law, the State Government shall exercise power of superintendence over the Police Force in respect of all matters."

This Section is *pari materia* to Section 3 of the Indian Police Act, 1861, which was applicable in the case of *J.A.C. Saldanha*. In the present case, when the application was made by respondent no.3 to the Chief Minister then in the lawful exercise of the power of State as enshrined in Section 19 of the Act, the State Government exercised its power of superintendence over the police and therefore the letter dated 11.02.2021 of the Additional Secretary, State of Uttarakhand to the D.G.P. for conducting investigation of the case by CBCID is completely justified.

59. At this stage, it would not be out of place to refer to the order dated 22.02.2016 passed in Misc. Case No.134/2024 passed by C.J.M. Dehradun on the protest application in FIR No.202/2012 stated above. While accepting the protest application of the complainant/respondent no.3, learned C.J.M. Dehradun has restated the allegations made by respondent no.3 in his protest application that the Investigating Officer did the investigation and filed the final report in order to give benefit to the petitioners/accused; that, the petitioners/accused had



attacked with intention of killing the respondent/complainant for which he had to get 7 stitches on his head. After hearing the respondent no.3/complainant and going through the record of the final report, learned C.J.M. directed to reinvestigate the matter u/s 173(8) of Cr.P.C. vide order dated 22.02.2016. But, the final report closing the matter was again filed by the Investigating Officer. Therefore, aggrieved complainant was well within his legal right to write the letter to the State Government for proper, correct and unbiased investigation as per law.

60. In the facts and circumstances of present case in the light of law enunciated by the Hon'ble Supreme Court in **J.A.C. Saldanha (supra)**, this Court is of the view that the State Government was well within its jurisdiction to exercise its power of superintendence over the police force to order for proper investigation as per law.

61. At the cost of repetition, it is reiterated that these writ petition are not filed for quashing of the letter of Additional Secretary, State of Uttarakhand dated 11.02.2021 (*Annexure-7*) but for quashing of the FIR, but, the counsel for the petitioners did not raise any other ground for quashing of the FIR except that the order of State Government directing investigation/ further investigation/reinvestigation in the matter vide its letter dated 11.02.2021 Annexure-7 is unjustified and impermissible in law.

62. Last but not least, this Court cannot be oblivious of the fact that the second final report of closure filed by the I.O. has not been accepted by the trial court, therefore, at this stage this Court does not



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think it fit to go into the merit of that aspect as it would amount to usurping the jurisdiction of Magistrate concerned. It is also not correct that petitioners of WPCRL No.249 of 2024 are not named in F.I.R. The other allegation made in these two writ petitions are the possible defences of the petitioners in WPCRL No.249 of 2024 and WPCRL No.318 of 2024, therefore, subject to proof at the anvil of trial.

63. For the foregoing reasons, the WPRCL No.249 of 2024 and WPCRL No.318 of 2024, being devoid of any merit, are hereby dismissed.

(Vivek Bharti Sharma, J.)
21.11.2024

Rajni

RAJINI
GUSAIN

Digitally signed by RAJINI GUSAIN
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