

HIGH COURT OF UTTARAKHAND AT NAINITAL
Criminal Misc. Application No.825 of 2020

Prabhsharan Singh Petitioner

Versus

State of Uttarakhand and another Respondents

Present:

Mr. Aditya Singh, Advocate for the petitioner.
Ms. Manisha Rana Singh, A.G.A. for the State.

And

Criminal Misc. Application No.597 of 2023

Jarnail Singh Petitioner

Versus

State of Uttarakhand and another Respondents

Present:

Mr. Harshit Sanwal, Advocate for the petitioners.
Ms. Manisha Rana Singh, A.G.A. for the State.

JUDGMENT

Hon'ble Ravindra Maithani, J.(Oral)

Since common questions of law and fact are involved in both these petitions, they are decided by this common judgment.

2. The challenge in these petitions is made to the summoning order dated 29.02.2020, passed in Special Sessions Trial No. 4 of 2020, State vs. Balwant Singh and 17 others, under Sections 420, 465, 467, 468, 471, 474, 120B, 34 IPC and Section 8/9 of the Prevention of

Corruption Act, 1988 by the court of District and Sessions Judge/Special Judge, Prevention of Corruption Act, Nainital (“the case”) as well as the entire proceedings of the case.

3. Heard learned counsel for the parties and perused the record.

4. The case is based on an FIR No. 32 of 2017, under Sections 120B, 167, 218, 219, 34, 409, 420, 465, 466, 467, 468, 471, 474 IPC Police Station Pant Nagar, District Udham Singh Nagar. According to it, the land was to be acquired for expansion of National Highway. The land owners in collusion with the Revenue Officers got declaration under Section 143 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (“the Act”) without any basis by forgery. It is this FIR, in which after investigation, charge sheet has been submitted against the petitioners.

5. Learned counsel appearing for the petitioner Prabhsharan Singh would submit that the case is based on the statement of Bhuwan Prakash Tiwari, who was Reader at the relevant time in the Office of Sub Divisional Magistrate (“SDM”), Bazpur. It is argued that except the ocular statements, there is no document. Learned counsel would raise the following points:-

- (i) The order under Section 143 of the Act was passed, based on the report of Assistant Consolidation Officer. It is not the case of the prosecution that the report of the Assistant Consolidation Officer was also forged.
- (iii) The declaration under Section 143 of the Act was obtained on 29.09.2012. If it was nullity as per prosecution, there was no occasion for the Revenue Officers to pass an order under Section 144 of the Act for setting aside the order dated 29.09.2012, passed in the proceedings under Section 143 of the Act.
- (iv) In the proceedings under Section 144 of the Act, the revenue authorities have not taken a plea that the order under Section 143 of the Act was ante-dated. There were different grounds taken viz. that order under Section 143 of the Code was *ex-parte* etc.

6. Learned counsel for the petitioner Jarnail Singh adopts the arguments as made on behalf of Prabhsharan Singh. He would add that the competent authority under Land Acquisition ("CALA") had given an award for

compensation. It is still in existence. If the declaration under Section 143 of the Act is ante-dated and nullity, the award passed by the CALA should have also been challenged.

7. According to the prosecution, the witness Bhuwan Prakash Tiwari, the then Reader in the Office of the SDM, Bazpur had entered 222 cases in the register, in which, cases are entered. Out of which, 3 cases were not decided and were carried forward for the year 2013. It is argued that as per prosecution, after serial number 222 for the year 2012 many more cases were added, but all of them have not been prosecuted and some of them had received compensation.

8. Learned State counsel would submit that it is a case of conspiracy between land owners and revenue officers so as to commit forgery to receive higher compensation by declaring their land as non agricultural under Section 143 of the Act. She would submit that Bhuwan Prakash Tiwari was the Reader, in the Office of SDM Bazpur, who entered the cases in a register. In the year 2012, total 222 cases were registered. Out of which, three cases were carried forward for the year 2013, but thereafter, many more cases were entered in that register in different handwritings. The Forensic Science Report

(“FSL”) confirms that the handwriting is different. She would submit that, in fact, the daily statement also confirms that the entries beyond 222 for the year 2012 were ante-dated.

9. This is a petition under Section 482 of the Code of Criminal Procedure, 1973 (“the Code”). The jurisdiction is much wide, but guided by the principles of law, as laid down by the Hon’ble Supreme Court in a catena of decisions.

10. In the case of State of Haryana and Others Vs. Bhajan Lal and others, 1992 Supp (1) SCC 335, the Hon’ble Supreme Court has illustratively given the circumstances under which the jurisdiction may be exercised. In para 102 of the judgment, the Hon’ble Supreme Court observed as hereunder:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae

and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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.”

11. What is being argued is that there is no evidence against the petitioners.

12. At the stage of deciding petition under Section 482 of the Code, a mini trial may not be conducted. The Court may not be in a position to appreciate the arguments on evidence and the Court cannot appreciate and examine credibility of the evidence. What is to be seen in the instant case is as to whether any *prima facie* case is made out by the prosecution so as to prosecute the petitioners.

13. According to the prosecution, in order to take higher amount of compensation, under a conspiracy, documents were forged and order under Section 143 of the Act was procured ante-dated prior to notification under Section 3A of the National Highways Act, 1956.

14. The Court refrains to make deeper scrutiny of the material. The Reader of the concerned court has given a statement that after serial number 222, all the cases were ante-dated. They were not entered into in his handwriting. In the revenue year 2012, according to him, 222 cases were entered in the register. Out of which, 219 had already been decided and 3 were carried forward

for the year 2013. A statement is given that FSL report confirms that the entries beyond 222 is in different handwriting.

15. The question as to why an order under Section 144 of the Act has been obtained if the order under Section 143 of the Act is ante-dated remains open. A person/authority may still challenge an order which is in nullity so as to clear the cloud which may arise due to such order.

16. An argument has been raised that in the proceedings under Section 144 of the Act, the ground of ante-dated order has not been taken. If that ground is not taken, that may have less impact in these proceedings. Whatever arguments have been raised in these matters, they relate to the factual complexity of the case. They may be available defences at the trial.

17. Having considered, this Court is of the view that there is no reason to make any interference. Accordingly, the petitions deserve to be dismissed.

18. The petitions are dismissed.

(Ravindra Maithani, J.)
18.12.2024

Jitendra