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HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc Application No. 452 of 2025

23 April, 2025

Md Adil

--Petitioner

Versus

State of Uttarakhand & Another

--Respondents

Presence:-

Mr. Shashank Shekhar Jha, learned counsel for the petitioner.

Mr. Deepak Bisht, learned D.A.G. for the State.

Hon'ble Vivek Bharti Sharma, J.

This criminal misc. application is filed under Section 528 of B.N.S.S. by the petitioner/accused for quashing of the impugned cognizance/summoning order dated 06.09.2019, the impugned charge-sheet dated 22.08.2018 as well as the entire proceedings of Criminal Case No.4662 of 2019 (*Case Crime No.93 of 2018*), titled as "*State vs. Md. Adil*" pending in the court of learned 2nd Additional Chief Judicial Magistrate, Dehradun under Section 67 of the Information Technology Act and Section 504 of IPC registered at Police Station Cantt, District Dehradun.

2. Learned counsel for the petitioner/accused



would submit that the petitioner/accused is a young student currently pursuing his B.Sc. in physics; that, the allegations in the F.I.R. and the impugned charge-sheet fails to disclose the commission of any cognizable offence under Section 67 of Information Technology Act and 504 of IPC; that, Section 67 of Information Technology Act and 504 of IPC require the *mens rea* but the same is missing in the charge-sheet; that, there was a delay of three days in filing the F.I.R.; that, URLs and mobile numbers cited in F.I.R. have not been subjected to cyber forensic examination to link them to the petitioner/accused; that, F.I.R. lacks specific details regarding time, place and manner of the alleged offences; that, a Facebook group was created, wherein the photograph of the complainant was shared comprised of only two members namely the petitioner/accused (*Md. Adil*) and one *Kadambari Thapa*; that, investigation was not done properly; that, the present criminal proceedings are liable to be quashed if charge-sheet is tested at the anvil of the law propounded in the case of '***State of Haryana & others vs. Chaudhary Bhajan Lal & Others***', (1992) SCC (Criminal) 426.



He would further rely upon a judgment of Hon'ble Supreme Court in the case of '**Sharat Babu Digumarti vs. Government of NCT of Delhi**', (2017) 2 SCC 18', wherein the Hon'ble Supreme Court clarified that mere dissemination or circulation of obscene content without *mens rea* (criminal intent) does not attract the provisions of Section 67 of the Information Technology Act.

3. Per contra, learned State counsel would vehemently oppose the petition on the grounds *inter alia* that the allegations in the F.I.R. are serious in nature; that, it is alleged in the F.I.R. that the petitioner/accused sent obscene messages, comments and filthy abuses on the Facebook wall and posted her photograph extracting it from her ID with comments; that, after some time when she deleted that comment, then petitioner/accused, from another ID in the name of *Dil Khan* with URL Nos. <https://www.facebook.com/profile.php?id100023583664509> and <https://www.facebook.com/mdaadil.ali>, sent the complainant obscene messages and uploaded her pictures on the obscene sites and wrote a message that whosoever wants to have fun with the



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complainant, then they should make a comment and sent the screenshot of this obscene site on her Facebook ID messenger and wrote that he will make the complainant a pornstar by the evening; that, petitioner/accused gave his mobile numbers 8607575335 and 7004781088 to the complainant and threatened her to call him back and when the complainant talked to him, then the petitioner/accused sent her a message that now he will post mobile number of the complainant on the obscene site with her photos and the complainant will get calls from people.

He would further submit that the copies of all these evidences were submitted alongwith the complaint to police.

4. He would further submit that the submissions made by learned counsel for the petitioner/accused are unsubstantiated; that, the petitioner/accused has merely filed the opening page of the charge-sheet only and has not annexed the statements of the witnesses and other evidences collected by the Investigating Officer forming part of the charge-sheet.



5. Perused the record of the petition.

6. This Court finds that the petitioner/accused has merely filed the opening page of the charge-sheet under Section 173 of Cr.P.C. and the photocopies of the order-sheet of the trial court. The petitioner/accused has not filed the copies of the statement of the witnesses recorded by the Investigating Officer during the investigation and other evidences collected by the Investigating Officer forming part of the charge-sheet, therefore, the submissions made by the learned counsel for the petitioner/accused are not substantiated. Even otherwise going through the contents of the F.I.R., the acts of the petitioner/accused do not only seem to be perversion of mind, but also constitute the offence of serious nature.

7. In the considered opinion of this Court, the trial court has rightly summoned the petitioner/accused to face trial under the relevant sections. Furthermore, the issues raised by the petitioner/accused are, apparently, his defence and are matter of evidence, which can only be appreciated in the trial and should not be looked into by this



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Court while exercising jurisdiction under Section 528 of B.N.S.S.

8. It is trite that the powers under Section 528 of B.N.S.S. have to be exercised sparingly, carefully and with caution and only to prevent abuse of process of any Court or otherwise to secure ends of justice.

9. In view of the above, this is not a fit case where the powers under Section 528 of B.N.S.S. can be exercised. Accordingly, the present C-528 petition lacks merit and the same is hereby dismissed *in limine*.

10. The trial court concerned is directed to do the needful in the matter.

(Vivek Bharti Sharma, J.)
23.04.2025

Akash