

**IN THE HIGH COURT OF UTTARAKHAND****AT NAINITAL****CRIMINAL MISC. APPLICATION No.959 of 2023**

Miss. XXX

--Applicant

Versus

State of Uttarakhand & Another

--Respondents

Presence:-

Mr. Abhishek Verma, learned counsel for the applicant.

Mr. Siddhartha Bisht, learned A.G.A. for the State

Mr. Sandeep Kothari, learned counsel for the respondent no.2.

Hon'ble Siddhartha Sah, J. (oral)

By means of the present criminal misc. application under Section 482 of Cr.P.C., the applicant has sought setting-aside of the summoning order dated 14.10.2022 passed by learned Chief Judicial Magistrate, Dehradun in Criminal Case No.6889 of 2022 titled as "State vs. Vipin Gusain", under Section 376 of IPC, P.S. Nehru Colony, Dehradun and further to remit the entire case of the applicant/victim for its consideration afresh by learned Magistrate in accordance with law and further summoned the accused/respondent no.2 under Sections 313, 376 and 420 of IPC.



2. The facts necessary for the adjudication of the present application under Section 482 of the Cr.P.C., as stated in the affidavit filed in support thereof, are as follows:

- (i) The applicant is the victim in the present case. She lodged an FIR on 13.04.2022 against respondent no.2, which was registered as FIR No. 119 of 2022 under Sections 376 and 313 of the IPC at Police Station Nehru Colony, District Dehradun.
- (ii) Apart from the version set out in the FIR, the victim got her statement recorded by the police under Section 161 of the Cr.P.C. Thereafter, she was produced before the concerned Magistrate for recording of her statement under Section 164 of the Cr.P.C.
- (iii) That apart from her medical was also conducted.
- (iv) It is pertinent to mention that after lodging of the FIR, the victim gave other clinical evidence to the concerned IO regarding the causes of miscarriage at the instance of the accused/respondent no.2, likewise WhatsApp chats. Upon such chats, the concerned IO did nothing. Furthermore, it is submitted that the accused/respondent no.2 also under the false promise, given in bad faith and



with no intention of being adhered to at that time, it was given, cheated the victim monetary too of Rs. 1,60,000/-, which is clear from the transaction details.

- (v) The victim gave all the relevant documents to the concerned Investigating Officer, however, as per the best knowledge of the applicant, the concerned IO did not use those documents as an evidence on the part of the investigation and the concerned IO submitted its charge sheet as against the accused/respondent no.2 only under Section 376 of IPC on 27.08.2022.

3. On the basis of the FIR as well as the other material available on record, the concerned Magistrate also summoned the accused/respondent no.2 under Section 376 of the IPC only, vide order dated 14.10.2022.

4. Assailing the aforesaid summoning order, learned counsel for the applicant, Mr. Abhishek Verma, would submit that the causing of the applicant's miscarriage is evident from the chats; therefore, the Investigating Officer failed to charge-sheet respondent no.2 under Section 313 of the IPC.

He would further submit that the chats also reveal that the applicant paid a total sum of Rs.1.60 lakhs to respondent no.2, who cheated her of the said amount.



However, the Investigating Officer failed to take all these aspects into consideration. According to him, although offences under Section 313 of the IPC and Section 420 of the IPC were also made out against respondent no.2, the charge-sheet was not filed under the appropriate provisions. He would further submit that the learned Magistrate also overlooked this aspect of the matter and summoned respondent no.2 only under Section 376 of the IPC. He, therefore, prays that the present Criminal Miscellaneous Application under Section 482 of the Cr.P.C. be allowed, the summoning order dated 14.10.2022 be set aside, and the matter be remitted to the learned Magistrate for fresh consideration.

5. *Per contra*, learned counsel for respondent no.2, Mr. Sandeep Kothari, would draw the attention of the Court to the manner in which the prayers have been couched in the relief clause of the present Criminal Miscellaneous Application. He would submit that a prayer seeking cognizance under a particular provision cannot be entertained, since taking cognizance is the exclusive domain and jurisdiction of the Magistrate. A victim cannot dictate the provision under which the Magistrate should take cognizance.

He would further submit that the allegations regarding the causing of the applicant's miscarriage are absolutely false and frivolous. The applicant is admittedly a



nurse serving in a hospital, and, therefore, such allegations are, on the face of it, frivolous and unbelievable.

He would further submit that no evidence regarding the offence under Section 313 of the IPC was found by the Investigating Officer and, therefore, the respondent no.2 has rightly not been charge-sheeted under Section 313 of the IPC.

6. On the monetary aspect, learned counsel for respondent no.2 would submit that it is not a case where the money was transferred unilaterally by the applicant to respondent no.2. Rather, it is a case involving multiple transactions between the applicant and respondent no.2. He would further submit that respondent no.2 had transferred comparatively higher amounts to the applicant. In this regard, he has drawn the attention of the Court to page no.57 of the paper book, which reflects that on a single day, respondent no.2 transferred a total amount of Rs.80,000/- to the applicant.

He would further submit that the financial transactions were both ways, as the parties were in a relationship at the relevant point of time.

7. Opposing the present Criminal Miscellaneous Application, Mr. Siddhartha Bisht, learned A.G.A. for the State, would submit that the charge-sheet has been filed only



under Section 376 of the IPC, and it is on the basis of the said charge-sheet the learned Magistrate has passed the cognizance order. He would further submit that the applicant has not assailed the charge-sheet. Therefore, the only material before the learned Magistrate was the charge-sheet under Section 376 of the IPC, and the learned Magistrate has committed no error in taking cognizance under the said section. Hence, he would submit that there is no scope for interference under Section 482 of the Cr.P.C. in the present case.

8. Having heard learned counsel for the parties and upon perusal of the record, the question that falls for consideration is whether, in exercise of its powers under Section 482 of the Cr.P.C., this Court can set aside the summoning order and remit the matter to the learned Magistrate for fresh consideration with a direction to summon the accused/respondent no.2 under Sections 313, 376 and 420 of the IPC, as prayed for by the applicant.

9. The learned counsel for the applicant has invited the attention of the Court to certain chats that the applicant was to consume certain medicines for the miscarriage, and in pursuance to that, she has consumed certain medicines and then she underwent an abortion.



10. In this regard, learned counsel for respondent no.2 has submitted that the applicant herself is a nurse serving in a hospital and was, therefore, fully aware of the consequences of consuming any medicine. He has further submitted that during the course of investigation, the Investigating Officer did not find any evidence to substantiate the offence under Section 313 of the IPC.

11. So far as the question of summoning respondent no.2 under Section 420 of the IPC is concerned, it needs to be observed that merely on the basis of monetary transactions, no summoning order can be passed, especially when the record prima facie indicates that the transactions were both ways.

12. The submissions made on behalf of the learned State counsel also need to be taken into consideration.

13. It is evident from the record that the charge-sheet is not under challenge. The only material available before the learned Magistrate was the charge-sheet submitted under Section 376 of the IPC, and it was on the basis thereof that cognizance was taken. Therefore, in view of the aforesaid facts and circumstances, this Court finds no scope for interference in the present application under Section 482 of the Cr.P.C. It is also not a fit case for remitting the matter to the learned Magistrate or for directing the summoning of the



accused/respondent no.2 under particular provisions viz. Sections 313, 376 and 420 of the IPC, as prayed for by the applicant.

14. In view of the foregoing discussion, this Court does not find any merit in the submissions advanced on behalf of the applicant. Accordingly, the present Criminal Miscellaneous Application under Section 482 of the Cr.P.C. deserves to be dismissed.

15. The present Criminal Misc. Application under Section 482 of Cr.P.C. is, thus, dismissed with the aforesaid observations.

(Siddhartha Sah, J.)
07.08.2026

Akash

AKASH