

SL. No.	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS UKHC010124252026  2026:UHC:6472
			<u>UKHC010124252026</u> <u>C528/1537/2026</u> Aas Mohd & another --Applicants Versus State of Uttarakhand & another --Respondents <u>Hon'ble Rakesh Thapliyal, J.</u> Mr. Karan Anand, learned counsel for the applicants. 2. Mr. Himanshu Sain, learned AGA, for the State of Uttarakhand/1. 3. The instant petition is moved by the present applicants Aas Mohd. S/o Sri Abdul Sattar and Afjal Ali @ Afjal S/o Inamul Huq, challenging the order of the learned Session Judge, Haridwar dated 30.05.2026, passed in Criminal Revision No.67 of 2025, "Aas Mohammad and another Vs. State of Uttarakhand", as well as against the order dated 12.08.2024, passed by the learned Chief Judicial Magistrate, Haridwar in Misc. Case No.87 of 2024. 4. It is argued by the learned counsel for the applicants that the proceedings are completely an abuse of process of law arising out of a civil dispute, before the court of learned Civil Judge (Junior Division) Haridwar in Original Suit No.75 of 2019, "Aas Mohd. Vs. Arvind Kanojiya" which was decreed <i>ex parte</i> on 25.08.2021. He submits that in this particular case i.e. Original Suit No.75 of 2019, "Aas Mohd. Vs. Arvind Kanojiya" the applicants challenge the sale deed dated 17.02.2007, regarding which the complainant lodged the FIR. He submits that the complainant himself was one of the defendants in Original Suit No.75 of 2019, "Aas Mohd. Vs. Arvind Kanojiya", and he is fully aware that in the pending civil suit, he is the defendant, despite this, he lodged the FIR on 16.08.2022, bearing FIR No.0450 of 2022, at Police Station Kotwali Jwalapur, Haridwar implicating

		both the applicants, and three other persons, namely, Maneesh Gupta, Chandrapal Singh and three-four unknown persons for the offences punishable under Sections 420, 120-B, 447, 467, 468, 471, 504 and 506 of IPC. He submits that in this FIR, after thorough investigation, the final report was filed which was assailed by the respondent/complainant by way of a protest petition, but the learned Trial Court instead of rejecting the protest petition treat the protest petition as a complaint case and summoned the applicants to face the trial for the offences punishable under Sections 420, 467, 468, 471 and 120B of IPC. Being aggrieved with the summoning order passed by the learned Chief Judicial Magistrate, Haridwar dated 12.08.2024, the revision was filed on the ground that the allegation alleged are purely civil in nature, however, the learned 1st Additional District and Session Judge, Haridwar, rejected the revision. Now being aggrieved, the instant petition has been preferred under Section 528 of BNSS, 2023. 5. It is argued by the learned counsel for the applicants that the entire prosecution is vitiated on two aspects. Firstly, in reference to the sale deed with regard to which the complaint was made the present applicants filed a civil suit, wherein the respondent/complainant was the defendant and the suit was decreed <i>ex parte</i>. 6. Secondly, in this FIR, the investigation was carried out and after thorough investigation, the closure report was filed, however, the learned Trial Court committed an illegality by treating the protest petition as a complaint case because there was no such material to summon the applicants to face the trial. He also submits that the learned Trial Court also committed an illegality while summoning the present applicants by ignoring this aspect that in respect of the sale deed in question already a civil suit was filed, which was decreed <i>ex parte</i>. He also pointed out that this aspect is also being over looked by the learned Trial Court while summoning the present applicants that after thorough investigation, the final report was filed. He also submits that the FIR has been lodged at a belated stage of 15 years and during this period no third party interest was created.
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		7. On the other side, Mr. Himanshu Sain, learned AGA submits that all the arguments as advanced by the learned counsel for the applicants are completely the subject matter of the trial because in the pending suit, which was filed by the present applicants, they themselves gave an undertaking before the Civil Court which is reflected from paragraph 12 of the <i>ex parte</i> judgment and decree that there is no any case with regard to the said sale deed and if in future if anyone make a complaint, they are responsible for this. The relevant extract of the order passed by the learned Civil Judge, dated 25.08.2021, particularly paragraph 12, read as under:- “12. इसके अतिरिक्त वादी आस मौहम्मद द्वारा शपथ पत्र कागज सं० 20सी02 पत्रादली पर दाखिल किया है। जिसमें आस मौहम्मद द्वारा यह शपथ बयान दिया है कि शपथकर्ता द्वारा शपथकर्ता के साथ हुये बैनामे के संबंध में धोखाधड़ी बैनामे को निरस्त कराने हेतु: उपरोक्त वाद योजित किया हुआ है। शपथकर्ता के विरुद्ध उक्त बैनामों के संबंध में कोई भी मुकदमा दर्ज नहीं है और यदि भविष्य में होता है तो शपथकर्ता उसका स्वयं जिम्मेदार होगा और जवाबदेही करेगा।” 8. Learned AGA also submits that though the complainant was the defendant in the civil suit, but the suit was decreed <i>ex parte</i>, wherein, the applicants gave an undertaking before the civil court that they are responsible in future if any case is filed, now since this is a case of impersonation, therefore, the delay in lodging the FIR is not fatal and will not vitiate the trial, since <i>prima facie</i> the learned Trial Court was satisfied to summon the present applicants and there is no scope of any interference. 9. Having heard the submissions of the learned counsel for the parties, and taking into consideration the submission as above and after perusal of the record, this Court does not find any merit in this petition on two accounts. Firstly, the suit filed by the applicants was decreed <i>ex parte</i> wherein, an undertaking of the applicants as reflected from paragraph 12 of the judgment and decree passed by the learned Civil Judge (Junior Division) dated
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			25.08.2021, passed in Original Suit No.75 of 2019, "Aas Mohd. Vs. Arvind Kanojiya". Secondly, it is a case of a impersonation and merely on the ground that suit filed by the applicants was decreed <i>ex parte</i>, the proceedings will not vitiate. 10. Accordingly, the instant C528 application dismissed being lack of merit. (Rakesh Thapliyal, J.) 28.07.2026 Nitesh/
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