

**HIGH COURT OF UTTARAKHAND AT NAINITAL****Criminal Misc. Case No. 5 of 2026****30 July, 2026**

Mukul Kumar

--Petitioner

Versus

Pramod Kumar

2: Karamveer Singh

3: Pankaj Kumar

4: Gautam Kumar

--Respondents

Presence:-

Mr.Saurabh Kumar Pandey, learned counsel for the applicant.

Hon'ble Siddhartha Sah, J. (oral)

By means of the present criminal misc. application under Section 340 of the Code of Criminal Procedure read with Section 379 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as "BNSS, 2023"), read with Section 252 of the BNSS the applicant has sought the following reliefs:-

“ 1- Record a finding to the effect that the proposed accused (petitioner no 1 to 4 of the writ petition) have knowingly and wilfully made false statements on oath, suppressed material facts regarding the pendency of parallel proceedings, and filed a false affidavit in Writ Petition (M/S) No. 1345 of 2025;

2- Conduct a preliminary inquiry under Section 340 of the Code of Criminal Procedure, 1973 (or relevant provisions of the BNSS) into the offences



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committed by the proposed accused(petitioner no 1 to 4) under Sections 191, 192, 193, 199, and 209 of the Indian Penal Code;

3- Direct the Registrar (Judicial) or any other authorized officer of this Hon'ble Court to file a formal written complaint against the Respondents (Proposed Accused) before the Court of the Judicial Magistrate of competent jurisdiction;

4- Impose exemplary and heavy costs upon the proposed accused(petitioner no 1 to 4) for flagrantly abusing the process of law, wilfully suppressing material facts, wasting the precious time of this Hon'ble Court, and causing severe mental and financial agony to the Applicant;”

2. Before proceeding further, it needs to be stated that by virtue of provisions of Section 340 Cr.P.C. corresponding to Section 379 of BNSS, the Court before whom such an application is filed is to make a preliminary inquiry.

3. Section 340 (1) of Cr.P.C. is being extracted hereinbelow for ready reference:

Section 340 (1) of Cr.P.C.

1. When upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of Sub-Section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary;
 1. record a finding to that effect;
 2. make a complaint thereof in writing;
 3. send it to a Magistrate of the first class having jurisdiction;
 4. take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do send the accused in custody to such Magistrate; and
 5. bind over any person to appear and give evidence before such Magistrate.

4. Thus, in view of the provisions of Section 340



Cr.P.C., the Court proceeds to make a preliminary inquiry for its satisfaction whether in the present case provisions of Section 340 can be invoked or not. Reference for adopting the procedure of preliminary inquiry is found in the judgment of Hon'ble Supreme Court in the case of ***Prithish vs. State of Maharashtra and others reported in 2002(1) SCC 253***. Relevant para no. 9 and 10 thereof are extracted hereunder for ready reference:-

“9. Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.

10. Inquiry is defined in Section 2(g) of the Code as every inquiry, other than a trial, conducted under this Code by a magistrate or court. It refers to the pre trial inquiry, and in



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the present context it means the inquiry to be conducted by the magistrate. Once the court which forms an opinion, whether it is after conducting the preliminary inquiry or not, that it is expedient in the interest of justice that an inquiry should be made into any offence the said court has to make a complaint in writing to the magistrate of first class concerned. As the offences involved are all falling within the purview of warrant case [as defined in Sec.2 (x)] of the Code the magistrate concerned has to follow the procedure prescribed in Chapter XIX of the Code. In this context we may point out that Section 343 of the Code specifies that the magistrate to whom the complaint is made under Section 340 shall proceed to deal with the case as if it were instituted on a police report. That being the position, the magistrate on receiving the complaint shall proceed under Section 238 to Section 243 of the Code.”

5. Reference also needs to be made to a judgment of the Hon’ble Supreme Court which clarifies the procedure in the case of ***State of Punjab vs. Jasbir Singh reported in 2022 SCC online SC 1240***. Relevant para nos. 1, 9, 10 and 11 thereof are being extracted hereunder for ready reference:-

“1. The matter has been placed before a three Judges Bench arising from a reference made vide order dated 26.02.2020 seeking the following questions to be answered:

“(i) Whether Section 340 of the Criminal Procedure, 1973 mandates a preliminary inquiry and an opportunity of hearing to the would-be accused before a complaint is made under Section 195 of the Code by a Court?

(ii) what is the scope and ambit of such preliminary inquiry?”

9. We have little doubt that there is no question of opportunity of hearing in a scenario of this nature and we say nothing else but that a law as enunciated by the Constitution Bench in Iqbal Singh Marwah’s case (supra) is in line with what was observed in Pritish’s case (supra).

10. Interestingly both the judgments in Pritish’s case and the Constitution Bench judgment in Iqbal Singh Marwah’s case (supra) have not been noted in order passed in Sharad



Pawar's Case (supra). The answer thus to the first question raised would be in the negative.

11. Insofar as the second question is concerned, the scope and ambit of such a preliminary inquiry, also stands resolved in terms of the Constitution Bench judgment of this Court in the Iqbal Singh Marwah's case (supra) as referred to aforesaid."

6. The learned counsel for the applicant has referred to paragraph nos.7, 15, 19 and 21 of the said Criminal Misc. Application. Para 7, 15, 19 and 21 are quoted hereunder: -

7. That the proposed accused(petitioner no 1 to 4) committed a grave fraud upon the Hon'ble High Court by deliberately suppressing the material fact that they had already invoked the jurisdiction of the Trial Court by filing an application under Order 9 Rule 13 of the CPC on 24.04.2025 to set aside the ex parte decree. While the said application was actively pending, the Respondents filed the Writ Petition on the very same grounds, specifically stating in Paragraph 18 that "there is no any other alternative and efficacious remedy available." This statement is a documented lie, as verified by the Hon'ble High Court's judgment dated 09.05.2025. The proposed accused(petitioner no 1 to 4) wilfully withheld this information to secure an interim stay by misleading the Court, which is a direct interference with the administration of justice and squarely falls within the ambit of Section 340 of the Cr.PC.

15. That the proposed accused (petitioner no 1 to 4) have made a patently false statement on oath in Paragraph 18 of their Writ Petition, declaring that 'there is no any other alternative and efficacious remedy available.' This statement is a bold and documented lie, as the Respondents had not only already exhausted their statutory remedy of Revision under Section 333 of the U.P.Z.A. & L.R. Act but were also simultaneously pursuing a Restoration Application under Order 9 Rule 13 of the CPC in the Trial Court (filed on 24.04.2025). The Respondents knowingly verified a false affidavit to suggest a total lack of legal recourse, solely to invoke the extraordinary jurisdiction of the Hon'ble High Court under Article 227. Such a dishonest declaration made to gain a jurisdictional advantage constitutes a clear offense of giving false evidence.

19. That in light of the aforementioned facts and the documentary evidence on record, a clear prima facie case of perjury and deliberate fraud upon the Court is established against the Respondents (Proposed Accused). The contradictions between their sworn statements in the Writ Petition - specifically regarding the lack of knowledge of the suit and the non-existence of alternative remedies-and the actual record of the Trial Court and the Board of Revenue, are not mere errors but are calculated



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deceptions. It is a settled position of law that the sanctity of judicial proceedings must be preserved, and no party should be allowed to use the Court as a platform for transmitting falsehoods. Therefore, it is 'expedient in the interest of justice' that a preliminary inquiry be conducted under Section 340 of the CrPC to safeguard the administration of justice and to deter such blatant abuse of the legal process.

21. That while the proposed accused (petitioner no 1 to 4) maintained a narrative of 'zero notice' before this Hon'ble Court, the judgment dated 09.05.2025 records that this claim was successfully disputed by the Applicants' count. The existence of the Respondents' own pending restoration application in the Trial Court proves they had active and prior knowledge of the case status. Their attempt to project a total lack of communication from the Trial Court was a strategic lie intended to create a false aura of victimhood and procedural irregularity.

7. Learned counsel for the applicant would submit that in the prior writ petition filed by the respondents herein who are the petitioners of writ petition no. 1345 of 2025 Pramod Kumar and others vs. State of Uttarakhand and others, the respondents herein (petitioners of the writ petition) have engaged in a systematic pattern of suppression, false declarations, and contradictory litigation. There exists a clear prima facie case of perjury and abuse of the process of law and, therefore, proceedings be initiated under Section 340 of the Cr.P.C/379 of the BNSS. When query was made by the learned counsel for the applicant as to in which paras of the writ petition the falsehood and the perjury as alleged has been committed by the respondents herein/petitioners of the writ petition no. 1345 of 2025. He would refer to para no. 15 and 18 thereof. Para no. 15 and 18 of writ petition no. 1345 of 2025 Pramod Kumar



and others vs. State of Uttarakhand and others are extracted hereunder:-

15- That the ex-parte order dated 07.02.2023 passed by Up-ziladhikari/Assistant Collector 1st Class Roorkee, District Haridwar as well as the judgment and order dated 21.04.2025 passed by Board of Revenue are misconceived.

18- That there is no any other alternative and efficacious remedy available to the petitioners except to approach this Hon'ble Court to invoke its extra ordinary jurisdiction under article 227 of the Constitutions amongst other grounds.

8. Though, an attempt was made on behalf of the learned counsel for the applicant that averments of para no. 15 and 18 of the writ petition, are false and there is suppression of material facts and that amounts to perjury for invoking Section 340 of Cr.P.C, the perusal of the said Paragraphs 15 and 18 of Writ Petition No. 1345 of 2025 reveals that there is no statement with regard to any fact.

9. In Paragraph 15 of the writ petition, exception has been taken to the orders passed by the Assistant Collector 1st Class Roorkee and the order dated 21.04. 2025 passed by the Board of Revenue, as misconceived. In Paragraph 18 of the writ petition it is pleaded that there is no other alternative efficacious remedy available to the petitioners except to approach this Court though its extra ordinary jurisdiction under Article 227 of the Constitution.



10. After having made a preliminary inquiry and after going through the record, it is evident that the averments as made in Paragraph 15 and 18 of the writ petition (WPMS No. 1345 of 2025) explicitly do not reveal that any false or misleading, statement was made nor there is any concealment of fact.

11. It is also borne out from the record that the writ petition (WPMS No. 1345 of 2025) was decided vide order dated 09.05.2025. At the time of hearing of the said writ petition, the applicant herein—Mr. Mukul Kumar (who was Respondent No. 3 in the said writ petition)—was duly represented by his counsel. He was heard by the Court and in fact, para no. 3 and para no. 5 of the order dated 09.05.2025, are very relevant and are extracted hereinbelow for ready reference:-

“3. Learned counsel for the petitioner contends that partition decree was passed ex-parte by the trial Court without service of notice upon him. This submission, however, is disputed by Mr. Sidhhartha Singh, learned counsel appearing for the respondents. He pointed out that petitioner has filed an application for setting aside ex-parte decree under Order 9 Rule 13 CPC on 24.04.2025, which is still pending before the Assistant Collector, First Class, Roorkee, District Haridwar.

5. Since petitioner has two remedies available to him, one of which is by filing application under Order 9 Rule 13 CPC, therefore, order passed by Board of Revenue, impugned by the petitioner, is of no relevance.”

12. Perusal of Paragraph no. 3 reveals when the counsel for the petitioner of Writ Petition (WPMS No. 1345 of 2025) contended that partition decree was passed ex- parte by the Trial Court without service of notice upon him, the submission was disputed by the



learned counsel appearing for the respondents (including Respondent No. 3 therein, Mr. Mukul Kumar/the applicant herein.)

13. In fact, counsel appearing on behalf of the applicant herein (respondent no.3 in the writ petition) pointed out that the petitioner of writ petition has filed an application for setting aside the ex-parte decree under Order 9 Rule 13 CPC on 24.04.2025, which is still pending before the Assistant Collector 1st Class Roorkee, District Haridwar.

14. On the said submissions, the Court in Paragraph no. 5 of the order dated 09.05.2025 has categorically observed that since the petitioner has two remedies available to him, one of which is by filing an application under Order 9 Rule 13 CPC, therefore, the order passed by the Board of Revenue impugned by the petitioner, is of no relevance.

15. Thus, from the perusal of the averments made in Paragraph 15 and 18 of WPMS No. 1345 of 2025, as also the order dated 09.05.2025, it is abundantly clear that there was no concealment or falsehood portrayed by the petitioner therein.

16. At this juncture, it is also relevant to mention the judgment of the Hon'ble Supreme Court in the case of ***James Kunjwal vs. State of Uttarakhand & Another***, reported in **2024 SCC OnLine SC 1943**. In the said judgment, the Hon'ble Supreme Court, after traversing through a number of judgments on the aspect of Section



340 of Cr.P.C., has laid down the conclusions in Paragraph 16. Paragraph 16 of the said judgment is being extracted hereinbelow for ready reference:-

“16. What we may conclude from a perusal of the above-noticed judicial pronouncements is that:-

- (i) The Court should be of the *prima facie* opinion that there exists sufficient and reasonable ground to initiate proceedings against the person who has allegedly made a false statement(s);
- (ii) Such proceedings should be initiated when doing the same is “expedient in the interests of justice to punish the delinquent” and not merely because of inaccuracy in statements that may be innocent/immaterial;
- (iii) There should be “deliberate falsehood on a matter of substance”;
- (iv) The Court should be satisfied that there is a reasonable foundation for the charge, with distinct evidence and not mere suspicion;
- (v) Proceedings should be initiated in exceptional circumstances, for instance, when a party has perjured themselves to beneficial orders from the Court.”

17. Inter alia, in Paragraph 16 of the said judgment in the case of James Kunjwal (*supra*) the Hon’ble Supreme Court has held that there should be “deliberate falsehood on a matter of substance”; The Court should be satisfied that there is a reasonable foundation for the charge, with distinct evidence and not mere suspicion; proceedings should be initiated in exceptional circumstances, for instance, when a party has perjured themselves to beneficial orders from the Court.

18. In view of the aforesaid authoritative pronouncement of the Hon’ble Supreme Court and the present set of circumstances wherein this Court is called upon to invoke the powers under Section of 340 of the Cr.P.C. it is evident that there is no deliberate falsehood



on a matter of substance and there is no reasonable foundation for the charge. There is also no exceptional circumstance that the petitioners of Writ Petition (WPMS No. 1345 of 2025) have perjured themselves to beneficial orders from the Court.

19. Thus, in view of the aforesaid facts and circumstances since it is not borne out from record that the petitioner of Writ Petition (WPMS No. 1345 of 2025) has made any deliberate falsehood on a matter of substance nor there is reasonable foundation for the charge that the petitioners of Writ Petition (WPMS No. 1345 of 2025) have perjured themselves to beneficial orders from the Court, hence, no case is made out for invoking the provisions of Section 340 of Cr.P.C. The application is devoid of merit and is hereby dismissed.

(Siddhartha Sah, J.)

30.07.2026

Nahid