HIGH COURT OF UTTARAKHAND AT NAINITAL

THE HON'BLE SRI JUSTICE RAKESH THAPLIYAL

Writ Petition (Criminal) No. 642 of 2024

Susheel ….....Petitioner

Versus

State of Uttarakhand and others ….Respondents

Counsel for the petitioner : Mr. Harendra Belwal, learned counsel
Counsel for the State : Mr. V.K. Jemini, learned Deputy Advocate General

Hon'ble Rakesh Thapliyal, J. (Oral)

1. By the instant writ petition, the petitioner is praying for quashing of the First Information Report dated 05.05.2024, bearing No. 0354 of 2024, lodged by respondent No. 4 against four persons, namely, Rajan, Hari Om, Guddu as well as against one unknown person for the offences punishable under Sections 147, 302 and 323 IPC, P.S. Manglore, District Haridwar.

2. It is submitted by the learned counsel for the petitioner that the petitioner is not named in the FIR, has no criminal history, and is a resident of the village of Dhandera, Police Station Civil Line Kotwali Roorkee, District Haridwar and he runs a bike mechanic and service shop, namely "Naman Hero Honda Service Centre" in Civil Line, Roorkee, District Haridwar.

3. As per the prosecution, the son of the deceased-Ankit Kumar lodged a First Information Report, alleging therein that the younger brother of the petitioner namely, Gopi loved with one girl namely Versha, daughter of Vijender, resident of Tansipur, Manglaur, District Haridwar and both of them loved with each other and ran away from home and got married. When the father of the petitioner came to know about this incident, both of them ran away from home.

4. It is further alleged that Puran Prakas went for search, then it came to the knowledge that the persons namely Rajan, Hariom and Guddu beaten his father and due to which his father died. In the said incident, one Manjeet Kumar was also beaten, who sustained injuries.

5. Learned counsel for the petitioner submits that earlier to this petition, the petitioner also filed an Anticipatory Bail, bearing ABA No. 489 of 2024; however, the same has been withdrawn by the petitioner with liberty to challenge the FIR in the appropriate forum. He further submits that the petitioner is ready to cooperate with the investigation; however, he may not be arrested.

6. Mr. V.K. Jemini, learned Deputy Advocate General for the State, on instructions, submits that the investigation is still going on and the injured witness had disclosed the name of the petitioner. He further submits that the allegations, as alleged are serious and since the investigation is still going on, therefore the petitioner is not entitled to get any protection, otherwise it will affect the ongoing investigation.

7. I also perused the impugned FIR and it appears from the FIR, a cognizable offence is made out and since the investigation is still going on, therefore, at this stage, there is no any question for quashing of the First Information Report. Apart from this, in the entire writ petition, there is no any averment in order to establish that this is a fit case for quashing of the FIR.

8. This Court, in the case of **Anoop Aggarwal and Another Vs. State of Uttarakhand and another**, passed in WPCRL No. 1666 of 2023, preferred under Article 226 of the Constitution of India, as well as in the case of **Harbans Singh Chugh Vs. State of Uttarakhand and others,** passed in WPCRL No. 299 of 2024, holds that it is the statutory right of the investigating agency to carry out the investigation and, during investigation if an interim

protection is given, then certainly it amounts to interference with the investigation.

9. Recently, the Hon'ble Supreme Court, in the case of **M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others, AIR 2021 SC 1918,** dealt with the issues wherein the interim orders were passed by different High Courts, in the matter, in which, the relief for quashing the FIR was quashed.

10. I perused the said judgment which was rendered by the Hon'ble Supreme Court wherein the issue of interim orders passed by different High Courts, in the matter, in which, the relief for quashing the FIR was sought, were dealt with. In this case, the Division Bench of the High Court of Judicature at Bombay, on an application filed by the accused under Article 226 of the Constitution of India read with Section 482 of CrPC, sought prayer for quashing of the criminal proceedings, wherein the High Court directed that "no coercive measures shall be adopted", against the original accused.

11. In **M/s Neeharika Infrastructure Pvt. Ltd.** (supra), the Hon'ble Supreme Court examined the issue with regard

to when the High Court could be justified in interfering with the investigation by the police, while exercising the inherent powers under Section 482 of Cr.P.C, and/ or under Article 226 of the Constitution of India, and while examining this issue, previous decision were noticed by the Hon'ble Supreme Court. The first judgment noticed by the Hon'ble Supreme Court is in the case of **State of Bihar vs. J.A.C. Saldanha, (1980) 1 SCC 554,** wherein the Supreme Court, after referring to the precedents, including the decision of the Privy Council in the case of **Khwaja Nazir Ahmad** (supra), has observed in Paragraph Nos. 25 and 26 as under:-

> "25. There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounded duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the court requesting the court to take cognizance of the offence under Section 190 of the Code its duty comes to an end. On a cognizance of the offence being taken by the court the police function of investigation comes to an end subject to the provision contained in Section 173(8), there commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the court, and to award adequate punishment according to law for the offence proved to the satisfaction of the court. There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate. This had been recognised way back in **King Emperor v. Khwaja Nazir Ahmad [AIR 1944 PC 18 : (1943-44) 71 IA 203, 213]** where the Privy Council observed as under:

> "In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities and it would, as Their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the court to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it, and not until then."
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> 26. This view of the Judicial Committee clearly demarcates the functions of the executive and the judiciary in the field of detection of crime and its subsequent trial and it would appear that the power of the police to investigate into a cognizable offence is ordinarily not to be interfered with by the judiciary."

13. In the case of **Anoop Aggarwal (supra)**, this Court also examined the scope of quashing of FIR under Article 226 of the Constitution of India and while deciding the issue, this Court also examined the rights and duties of the police to investigate into the cognizable offence. The powers of investigation into cognizable offences are contained in Chapter XII of the Code of Criminal Procedure and the entire Chapter deals with the information to the police in their powers to investigate. Section 154 deals with information in cognizable offence and Section 156 deal with the investigation into such offence and under these provisions the police have the statutory right to investigate into any circumstances of any alleged cognizable offence. This Court also relied upon the judgment rendered by the Hon'ble

Supreme Court, particularly, the landmark judgment which is in the case of **King Emperor Vs. Khwaja Nazir Amad, AIR 1945 PC 18**, wherein it is observed that there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities. It is further observed that "it would be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. It is further observed in the said case that the functions of the judiciary and the police are complementary, not over lapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function.

14. Apart from this, another judgment which was also taken into consideration is the judgment rendered by the Hon'ble Supreme Court in the Case of **Union of India Vs. Prakash P. Hinduja, (2003) 6 SCC 195,** and in Paragraph No.20, the Hon'ble Supreme Court observed and held as under:-

> "20. Thus the legal position is absolutely clear and also settled by judicial authorities that the court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the first information report till the submission of the report by the officer in charge of the police station in court under Section 173(2) CrPC, this field being exclusively reserved for the investigating agency."

15. This Court also dealt with the landmark judgment of Hon'ble Supreme Court in the case of **State of Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 335,** it is observed and held by the Hon'ble Supreme Court that save in exceptional cases where non interference would result in miscarriage of justice, the court and the judicial process should not interfere at the stage of the investigation of offence. It is further observed that in a routine case where information of an offence or offences has been lodged, investigation commenced, search and seizure followed and suspects arrested, the resort to the unusual procedure of oral applications and oral appeals and interim stay order thereon would have the effect of interfering and staying the investigation of offences by the investigating officer performing statutory duty under Cr. P.C.

16. In the case of **State of Orissa vs. Ujjal Kumar Burdhan, (2012) 4 SCC 547,** it is observed and held by the Hon'ble Supreme Court that unless case of gross abuse of power is made out against those in charge of investigation, the High Court should be loath to interfere at early/premature stage of investigation.

17. In the case of **Satvinder Kaur vs. State (Govt. of NCT of Delhi), (1999) 8 SCC 728,** in Paragraph Nos.14 to 16, it is observed and held by the Hon'ble Supreme Court as under:-

> "14. Further, the legal position is well settled that if an offence is disclosed the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed. If the FIR, prima facie, discloses the commission of an offence, the court does not normally stop the investigation, for, to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. **[State of W.B. v. Swapan Kumar Guha, (1982) 1 SCC 561 : 1982 SCC (Cri) 283]** It is also settled by a long course of decisions of this Court that for the purpose of exercising its power under Section 482 Cr.P.C. to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se; it has no jurisdiction to examine the correctness or otherwise of the allegations. **[Pratibha Rani v. Suraj Kumar, (1985) 2 SCC 370, 395 : 1985 SCC (Cri) 180]**
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> 15. Hence, in the present case, the High Court committed a grave error in accepting the contention of the respondent that the investigating officer had no jurisdiction to investigate the matters on the alleged ground that no part of the offence was committed within the territorial jurisdiction of the police station at Delhi. The appreciation of the evidence is the function of the courts when seized of the matter. At the stage of investigation, the material collected by an investigating officer cannot be judicially scrutinized for arriving at a conclusion that the police station officer of a particular police station would not have territorial jurisdiction. In any case, it has to be stated that in view of Section 178(c) of the Criminal Procedure Code, when it is uncertain in which of the several local areas an offence was committed, or where it consists of several acts done in different local areas, the said offence can be enquired into or tried by a court having jurisdiction over any of such local areas. Therefore, to say at the stage of investigation that the SHO, Police Station Paschim Vihar, New Delhi was not having territorial jurisdiction, is on the face of it, illegal and erroneous. That apart, Section 156(2) contains an embargo that no proceeding of a police officer shall be challenged on the ground that he has no territorial power to investigate. The High Court has completely overlooked the said embargo when it entertained the petition of Respondent 2 on the ground of want of territorial jurisdiction.
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> 16. Lastly, it is required to be reiterated that while exercising the jurisdiction under Section 482 of the

> Criminal Procedure Code of quashing an investigation, the court should bear in mind what has been observed in the **State of Kerala v. O.C. Kuttan [(1999) 2 SCC 651 : 1999 SCC (Cri) 304 : JT (1999) 1 SC 486]** to the following effect : **(SCC pp. 654-55, para 6)**
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> > "Having said so, the Court gave a note of caution to the effect that the power of quashing the criminal proceedings should be exercised very sparingly with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. It is too well settled that the first information report is only an initiation to move the machinery and to investigate into a cognizable offence and, therefore, while exercising the power and deciding whether the investigation itself should be quashed, utmost care should be taken by the court and at that stage, it is not possible for the court to sift the materials or to weigh the materials and then come to the conclusion one way or the other. In the case of **State of U.P. v. O.P. Sharma [(1996) 7 SCC 705 : 1996 SCC (Cri) 497 : JT (1996) 2 SC 488]** a three-Judge Bench of this Court indicated that the High Court should be loath to interfere at the threshold to thwart the prosecution exercising its inherent power under Section 482 or under Articles 226 and 227 of the Constitution of India, as the case may be, and allow the law to take its own course. The same view was reiterated by yet another three-Judge Bench of this Court in the case of **Rashmi Kumar v. Mahesh Kumar Bhada [(1997) 2 SCC 397 : 1997 SCC (Cri) 415 : JT (1996) 11 SC 175]** where this Court sounded a word of caution and stated that such power should be sparingly and cautiously exercised only when the court is of the opinion that otherwise there will be gross miscarriage of justice. The Court had also observed that social stability and order is required to be regulated by proceeding against the offender as it is an offence against society as a whole."

18. In the case of **Supdt. of Police, CBI vs. Tapan Kumar Singh, (2003) 6 SCC 175** and in the case of **State of U.P. vs. Naresh, (2011) 4 SCC 324,** it is observed and held by the Hon'ble Supreme Court that FIR is not an encyclopaedia, which must disclose all facts and details

relating to the offence reported. In paragraph 20 in the case of **Tapan Kumar Singh** (supra), it is observed and held as under:

> *20. It is well settled that a first information report is not an encyclopaedia, which must disclose all facts and details relating to the offence reported. An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eyewitness so as to be able to disclose in great detail all aspects of the offence committed. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details he must find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the police officer concerned is empowered under Section 156 of the Code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the*

> *consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can."*

19. Similar view was also taken by the Hon'ble Supreme Court in the case of **P. Chidambaram vs. Directorate of Enforcement, (2019) 9 SCC 24**, wherein it is observed that the investigation of a cognizable offence and the various stages thereon including the interrogation of the accused is exclusively reserved for the investigating agency whose powers are unfettered so long as the investigating officer exercises his investigating powers well within the provisions of the law and the legal bounds.

20. In the recent decision of the Hon'ble Supreme Court in the case of **Skoda Auto Volkswagen India Private Limited vs. State of Uttar Pradesh, 2020 SCC OnLine SC 958**, it is observed in Paragraph No.40 as under:-

> *"40. It is needless to point out that ever since the decision of the Privy Council in **King Emperor v. Khwaja Nazir Ahmed AIR 1945 PC 18**, the law is well settled that Courts would not thwart any investigation. It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on. As cautioned by this Court in **State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335,** the power of quashing should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. While examining a complaint, the quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in*

> *the FIR or in the complaint. In* ***S.M. Datta v. State of Gujarat (2001) 7 SCC 659*** *this Court again cautioned that criminal proceedings ought not to be scuttled at the initial stage. Quashing of a complaint should rather be an exception and a rarity than an ordinary rule. In* ***S.M. Datta*** *(supra), this Court held that if a perusal of the first information report leads to disclosure of an offence even broadly, law courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere."*

21. In view of the discussion as aforesaid, I do not find any merit in the instant writ petition and this is not a fit case in which the FIR can be quashed. The writ petition is, accordingly dismissed, being devoid of merit.

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Rakesh Thapliyal, J.

Dt: 18.06.2024
Mahinder/