2025:UHC:11677

HIGH COURT OF UTTARAKHAND

AT NAINITAL

Criminal Misc. Application No. 740 of 2024

Nikhil Kaushik & Anr. .....Applicants

Versus

State of Uttarakhand & Anr. .....Respondents

Presence:-

Mr. Tajhar Qayyum, learned counsel for the Applicants.

Mr. S. S. Chauhan, learned D.A.G. assisted by Mr. Vikash Uniyal, learned Brief Holder for the State of Uttarakhand.

Hon'ble Ashish Naithani, J.

The present Criminal Miscellaneous Application under Section 482 of the Code of Criminal Procedure has been filed by the Applicants, namely Nikhil Kaushik and Govind Gopal Kaushik, seeking quashing of FIR No. 0425 of 2021 dated 17.06.2021 registered at Police Station Kotwali Roorkee, District Haridwar, for offences under Sections 406, 504 and 506 of the Indian Penal Code, along with the charge-sheet dated 10.09.2021, the cognizance and summoning order dated 12.10.2023 passed by the learned Additional Chief Judicial Magistrate, Roorkee, District

Haridwar and the entire proceedings of Criminal Case No. 3297A of 2023 titled as *"State v. Nikhil Kaushik and others"*.

2. The FIR in question was lodged by Respondent No.2, Talat Zabin, alleging that the Applicants, with whom she and her husband were acquainted, committed criminal breach of trust in relation to monetary transactions, abused her in filthy language, and extended threats. The FIR was lodged on 17.06.2021, whereas the alleged incidents are stated to pertain to the period preceding the said date.

3. During the investigation, statements of the informant and other witnesses were recorded. Notices under Section 41-A CrPC were issued to the Applicants, and upon completion of investigation, a charge-sheet dated 10.09.2021 was submitted against the Applicants for offences under Sections 406, 504 and 506 IPC.

4. The charge-sheet was laid before the learned Additional Chief Judicial Magistrate, Roorkee, who, vide order dated 12.10.2023, took cognizance of the offences alleged and summoned the Applicants to face trial. Aggrieved thereby, the Applicants have approached this Court invoking its inherent jurisdiction.

5. Learned counsel for the Applicants submitted that the FIR and the subsequent criminal proceedings are a gross abuse of the process of law and have been instituted with an oblique motive. It was contended that the dispute between the parties is purely private and civil in nature, arising out of monetary transactions, and no criminal offence is made out.

6. It was argued that there is an unexplained delay of more than thirty-six days in lodging the FIR, which, according to learned counsel, casts serious doubt on the veracity of the allegations. It was submitted that no satisfactory explanation for the delay has been offered by the informant.

7. Learned counsel for the Applicants further contended that the allegations in the FIR are vague, omnibus, and lack material particulars. It was argued that even if the contents of the FIR and the charge-sheet are taken at their face value, the essential ingredients of the offence under Section 406 IPC, namely entrustment and dishonest misappropriation, are not made out.

8. It was also submitted that the entire prosecution

case is based on interested witnesses and that no independent witness has been examined during the investigation. According to the Applicants, the Investigating Officer conducted a perfunctory investigation and mechanically submitted the charge-sheet.

9. Learned counsel further argued that the learned Magistrate has taken cognizance in a routine and mechanical manner without proper application of judicial mind, and that continuance of the criminal proceedings would cause undue harassment to the Applicants.

10. Per contra, learned State Counsel opposed the application and submitted that the FIR, the statements recorded during the investigation, and the charge-sheet clearly disclose the commission of cognizable offences. It was argued that the prosecution case, at this stage, cannot be disbelieved or tested on merits in proceedings under Section 482 CrPC.

11. Learned counsel for the State contended that the delay in lodging the FIR is not fatal at the stage of quashing and that the same is a matter for the appreciation of evidence during trial.

12. It was further submitted that the allegations disclose entrustment of money and its dishonest non-return, which prima facie attracts Section 406 IPC, and that the allegations of abuse and threats sufficiently constitute offences under Sections 504 and 506 IPC.

13. Learned counsel for Respondent No. 2 supported the submissions advanced on behalf of the State and submitted that the Applicants are attempting to thwart a lawful prosecution by invoking the inherent jurisdiction of this Court. It was argued that the defence sought to be raised by the Applicants pertains to disputed questions of fact, which cannot be adjudicated upon in proceedings under Section 482 CrPC.

14. It was lastly submitted that the learned Magistrate has rightly taken cognizance upon due consideration of the police report and accompanying material, and that no interference is warranted at this stage.

15. Heard learned counsel for the Parties and perused the records.

16. At the outset, it is necessary to examine whether the allegations, as contained in the FIR and reiterated in the

charge-sheet, prima facie disclose the commission of the offences alleged. A plain reading of the FIR indicates that Respondent No. 2 has alleged entrustment of money to the Applicants and its dishonest non-return, accompanied by allegations of abuse and criminal intimidation. These allegations are not vague or illusory in nature. The charge-sheet reflects that the Investigating Officer, upon recording statements of witnesses and collecting material during the investigation, found sufficient grounds to submit a police report under Sections 406, 504 and 506 IPC.

17. The contention of the Applicants that the dispute is purely civil in nature does not merit acceptance at this stage. It is a settled principle that the mere existence of a civil remedy does not bar criminal proceedings if the factual allegations disclose the ingredients of a criminal offence. Whether the allegations ultimately result in conviction or acquittal is a matter of trial. At the stage of considering a petition under Section 482 CrPC, the Court is required only to see whether the allegations, if taken at face value, constitute the offences alleged.

18. Much emphasis was laid by learned counsel for the Applicants on the delay in lodging the FIR. While a delay in

reporting an offence may, in a given case, have a bearing on the credibility of the prosecution's version, such a factor cannot be determinative at the stage of quashing. The explanation for the delay, the circumstances surrounding it, and its impact on the prosecution case are all matters that require an appreciation of evidence. This Court cannot, in exercise of inherent jurisdiction, adjudicate upon such factual aspects or draw inferences therefrom.

19. The argument that the prosecution case rests solely on interested witnesses and lacks independent corroboration also cannot be examined at this stage. The credibility of witnesses and the weight to be attached to their testimony are matters for trial. The Court, while exercising jurisdiction under Section 482 CrPC, does not act as a trial court or an appellate court over the material collected during investigation.

20. The submission that the essential ingredients of the offence under Section 406 IPC are not made out is also premature. The question whether there was entrustment, whether there was dishonest misappropriation, and whether the Applicants acted with the requisite mens rea are all issues which require evidence to be led and tested through

cross-examination. The charge-sheet indicates that the prosecution proposes to lead evidence on these aspects. At this stage, it cannot be said that the allegations are so inherently improbable or absurd that no prudent person could ever reach a conclusion that an offence has been committed.

21. As regards the challenge to the cognizance and summoning order, this Court finds no manifest illegality or perversity. The learned Magistrate was required to satisfy himself as to the existence of a prima facie case on the basis of the police report and accompanying material. A detailed evaluation of evidence or recording of elaborate reasons is not contemplated at the stage of taking cognizance. The order reflects the application of a judicial mind sufficient for the purpose of summoning.

22. This Court is also mindful of the settled position that the inherent jurisdiction under Section 482 CrPC is to be exercised with great caution and only in exceptional circumstances. The present case does not fall within any of the recognised categories where quashing of criminal proceedings at the threshold is warranted, such as where the allegations do not disclose any offence, or where the

proceedings are manifestly attended with mala fides or are maliciously instituted with an ulterior motive, on the face of the record.

23. The defence sought to be raised by the Applicants, including their version of events and the circumstances relied upon by them, cannot be examined in proceedings under Section 482 CrPC. Acceptance of such contentions would require this Court to enter into disputed questions of fact, which is impermissible in exercise of inherent jurisdiction.

24. In the considered opinion of this Court, permitting the criminal proceedings to continue would not amount to abuse of the process of the Court. On the contrary, interference at this stage would result in premature termination of a prosecution which, on the face of the record, discloses a prima facie case.

ORDER

In view of the detailed reasons recorded hereinabove, this Court finds no merit in the present Criminal Miscellaneous Application.

The application under Section 482 of the Code of Criminal Procedure is accordingly dismissed.

Pending applications, if any, stand disposed of.

(Ashish Naithani, J.)
04.12.2025

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