* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on : 11th December, 2024**
Pronounced on: 23rd December, 2024

\+ CRL.M.C. 5174/2013 & Crl.M.A.5137/2020

HARPAL SINGH .....Petitioner

Through: Mr. Ramesh Gupta, Sr. Adv. with Mr. Rajiv K Garg, Mr. Ashish Garg, Mr. Devender Nagar, Mr. Govind Singh, Mr. Shiven Banga and Mr. Lalit Nagar, Advs.

versus

STATE OF UTTRAKHAND & ORS. ....Respondents

Through: Mr. Satish Kumar, APP for the State.
Mr. Saurabh Trivedi, Advocate for R-1 & 3
Me Desh Ratan Nigam, Adv. for R-2

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

1. The instant petition under Section 482 of the Code of Criminal Procedure (hereinafter as 'CrPC') (now Section 528 of the BNSS) has been filed on behalf of the petitioner seeking the following reliefs:

> *"a) quashing of charge sheet No.16C of 2006 dated 20.7.2010 in crime case No. 182 of 2006 u/s 302/34/114/120B and section 3(2)(5) SC/ST Act registered at Kotwali Roorkee, District Haridwar and summoning order dated 29.9.2010 passed by learned Judicial Magistrate (First Class) Roorkee (Haridwar) in Criminal Case No.3539*

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of 2010 and all other proceedings arising therefrom against the petitioner;
b) pass such other or further orders which this Hon'ble Court may deem fit and proper may also be passed in the interest of justice."

2. The brief facts leading to the filing of the instant petition are as under:

a) On 18th June, 2006, an FIR bearing no. 182/2006 was lodged under Section 302/114/34 r/w 120B of the Indian Penal Code, 1860 (hereinafter as 'IPC') read with Section 3(2)(v) of the SC/ST Act, 1989 at Police Station: Roorkee, Uttarakhand on the complaint made by one Mr. Vikas Kumar for the murder of his father (hereinafter as 'deceased').

b) Pursuant to lodging of the said FIR, the police investigated the matter and apprehended a few people including one Mr. Aakash Tyagi who allegedly named the present petitioner to be involved in the murder of the deceased.

c) Thereafter, apprehending arrest, the petitioner surrendered before the concerned Magistrate, which was declined vide order dated 4th October, 2006 and it was stated that the *prima facie* investigation did not reveal any involvement of the petitioner herein.

d) After completion of the investigation, the police filed a charge sheet and named eight persons to be involved in

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the said murder, however, the petitioner's name was still not there in the same.

e) In the year 2007, one of the accused namely Mr. Rajiv Rathi filed an affidavit before the SSP of the area concerned, thereby, alleging involvement of the petitioner on the accusations made by one Mr. Aakash Tyagi.

f) Thereafter, the investigation officer/Circle officer filed an application dated 17th August, 2007 before the learned Judicial Magistrate-I, Roorkee seeking issuance of non – bailable warrants against the petitioner as well as to initiate proceedings under Section 82/83 of the CrPC and the same was granted on the same day.

g) In revision, the above said order was stayed by the learned District and Sessions judge vide order dated 18th November, 2007.

h) In the year 2008, the Investigating Officer (hereinafter "IO") closed the investigation *qua* the petitioner and noted that the involvement of the petitioner is not found and his name was merely taken by one of the accused due to a rivalry between them.

i) Subsequently, a supplementary charge sheet bearing no. 16-C/06 dated 20th July, 2010 was filed by the police against the petitioner and cognizance of the same was taken by the learned Magistrate vide order dated 29th September, 2010. Upon appeal, the Uttarakhand High

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Court stayed the above said order by passing an order on 25th November, 2010

j) Thereafter, pursuant to an application made by the complainant, the trial of the case was transferred to Delhi by the Hon'ble Supreme Court vide order dated 11th January, 2011 in Transfer petition (CrL) no. 29/2008.

k) The petitioner has now approached this Court seeking quashing of the supplementary chargesheet, summoning order *qua* him.

3. Mr. Ramesh Gupta, learned senior counsel for the petitioner submitted that the fourth/supplementary chargesheet filed against the petitioner after a prolonged delay of four years is contrary to law as no evidence has been found against the petitioner herein.

4. It is submitted that no investigation is permissible after commencement of trial and the same can only happen if the learned Sessions Judge directs for the same, therefore, the chargesheet filed against the petitioner is bad in law.

5. It is submitted that the subsequent charge sheet filed on the basis of alleged investigation done by the IO is without legal backing as the IO failed to obtain necessary permission for fresh investigation from the learned Sessions Judge where the trial is in progress.

6. It is submitted that the IO erred in not appreciating that no reliance can be placed on the statement made by the accused Aakash Tyagi as the same was made in the police custody.

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7. It is submitted that the IO failed to take into consideration that the petitioner is nowhere related to the deceased in any manner and mere allegations by one of the accused persons cannot prove his guilt.

8. It is submitted that the earlier IO of the instant case categorically recorded that no case is made out against the petitioner, therefore, initiation of fresh inquiry against him without any basis or incriminating evidence is unlawful.

9. It is submitted that the learned Magistrate erred in taking cognizance of the matter as the same is not based on any oral or primary evidence. The learned senior counsel further apprised this Court that no single eye witness has testified against the petitioner and therefore, no case is made out against him.

10. Therefore, in view of the foregoing submissions, the learned senior counsel submitted that the instant petition be allowed and the impugned chargesheet and proceedings emanating therefrom may be quashed *qua* the petitioner.

11. *Per Contra*, the learned APP appearing for the State vehemently opposed the instant petition submitting to the effect that the grievance of the petitioner has already been adjudicated by the Uttarakhand High Court and the same was dismissed.

12. It is submitted that the chargesheet against the petitioner/accused is related to the same murder and filing of the same was done only after proper investigation based on credible information and therefore, the present petition is nothing but an abuse of the process of law.

13. Thereafter, the learned counsel for the complainant submitted that the complainant never named the present petitioner in his complainant or

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during the course of trial, therefore, the reliefs as prayed by the petitioner herein may be granted.

14. Heard the learned counsel for the parties and perused the record.

15. The petitioner has approached this Court seeking quashing of the supplementary charge sheet in which he has been named as one of the accused persons involved in the murder of the deceased.

16. It is discernible from the material on record i.e. the FIR and other evidence that the petitioner's alleged involvement never came up during the course of investigation rather suddenly popped up after alleged information provided by one of the accused namely Mr. Aakash Tyagi.

17. The earlier IO had filed three charge sheets before the concerned Trial Court and even though the information about the alleged involvement of the petitioner herein was given much before filing of the said chargesheets, neither did the investigation agency name him in any of the charge sheets nor did the agency assigned any role to the petitioner.

18. Furthermore, the report filed by the IO i.e. Case Diary no. SCD-54 dated 20th July, 2007 clearly recommended closing of the investigation against the petitioner herein as no offence is made out against him.

19. The petitioner herein has placed other material i.e. Case Diary SCD-66 on record which also establishes that no incriminating evidence against him was found by the IO in the subsequent investigations.

20. With regard to the contention of the learned APP that a similar petition was dismissed by the Uttarakhand High Court vide order dated 20th December, 2011, this Court has perused the said order and it is apparent that the Coordinate Bench did not comment upon the role of the

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petitioner in the above said murder rather dismissed the application on the pretext of transfer of the Trial from Uttarakhand to Delhi.

21. The bare perusal of the said order clarifies that the contentions advanced by the learned APP for the State herein are misconceived as the Court did not get into the merits of the case.

22. Furthermore, the order passed by the Hon'ble Supreme Court in the SLP filed by the petitioner duly granted him the liberty to approach this Court with the grievance and therefore, the petitioner filed the instant petition.

23. As per the scope of Section 482 CrPC expounded and enunciated by the Hon'ble Supreme Court in ***V.P. Shrivastava v. Indian Explosives Ltd.*, (2010) 10 SCC 361** this Court is duly empowered to exercise its inherent power to provide justice to a party. The relevant parts of the said judgment read as under:

> ***15.*** *Before evaluating the contentions advanced on behalf of the parties, it will be useful to briefly notice the scope and ambit of the inherent powers of the High Court under Section 482 of the Code. The section itself envisages three circumstances under which the inherent jurisdiction may be exercised, namely; (i) to give effect to an order under the Code; (ii) to prevent an abuse of the process of court; and (iii) to otherwise secure the ends of justice. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but is not unlimited. It has to be exercised sparingly, carefully and cautiously, ex debito justitiae to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim*

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or caprice. The power exists to prevent abuse of authority and not to produce injustice.

16. *In one of the earlier cases in R.P. Kapur v. State of Punjab [AIR 1960 SC 866 : 1960 Cri LJ 1239] this Court had summarised some of the categories of cases where the inherent power under Section 482 of the Code could be exercised by the High Court to quash criminal proceedings against the accused. These are: (AIR p. 869, para 6)*

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings e.g. want of sanction;

(ii) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

17. *In Dinesh Dutt Joshi v. State of Rajasthan [(2001) 8 SCC 570 : 2002 SCC (Cri) 24] , while dealing with the inherent powers of the High Court, this Court has observed thus: (SCC p. 573, para 6)*

"6. … The principle embodied in the section is based upon the maxim: quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases."

18. *In G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] this Court had opined as follows: (SCC p. 643, para 8)*

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> *"8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid down certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."*

24. From the above, it is clear that under Section 482 CrPC (now Section 528 BNSS), this Court is duly empowered to quash an FIR or a charge sheet if the allegations leveled in the same are not backed by sufficient evidence.

25. In the instant case, the investigating agency has leveled allegations against the petitioner on the basis of the information received from one of the accused persons, however, they fail to corroborate the same with any evidence.

26. It is also discernible from the records that prior to filing the chargesheet under which petitioner has been named, there were three charge sheets already filed by the Police and no role of the petitioner was ever mentioned therein.

27. Furthermore, even though it is alleged that the petitioner and the deceased had a political rivalry, the same is not backed by any evidence rather the case of the petitioner is duly supported by the complainant, i.e.,

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son of the deceased where it is categorically submitted before this Court that he never named/alleged anything against the petitioner herein.

28. The material placed on record does not support the contention regarding presence of a political rivalry between the parties and therefore, this Court is of the view that the said allegation is misplaced.

29. Apart from the said factors, it is also appropriate to comment upon the manner in which reinvestigation was conducted by the police. As per the position of law, in order to investigate a case, the investigation agencies are legally required to obtain necessary permission from the Session judge, however, in the instant case, the permission was obtained from the magistrate which is ultra vires to the powers of the said judicial officer.

30. Furthermore, despite clear noting from the earlier IO, the SSP ordered fresh inquiry and still no evidence regarding the petitioner's involvement was ever found by the investigative agency.

31. In light of the same, this Court deems it appropriate to quash the impugned chargesheet *qua* the present petitioner as the investigating agency failed to corroborate with any evidence except an information received from one of the accused.

32. In view thereof, the instant petition is allowed and the chargesheet bearing no. 16-C/06 dated 20th July, 2010 in Crime Case No. 182/2006 along with the summoning order dated 29th September, 2010 and all the proceedings emanating therefrom *qua* the present petitioner in Criminal Case No. 3539/2010 are quashed.

33. Accordingly, the instant petition, along with the pending applications, if any, stands disposed of.

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34. Judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 23, 2024
rt/av/ryp

Click here to check corrigendum, if any

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