

**IN THE HIGH COURT OF UTTARAKHAND**  
**AT NAINITAL**

**Criminal Miscellaneous Application No. 1314 of 2023**

Pramendra Dobal. .... Applicant.

Versus

State of Uttarakhand  
and Another. .... Respondents.

With

**Criminal Miscellaneous Application No. 1281 of 2015**

Ms. Mukta Mehra. .... Applicant.

Versus

State of Uttarakhand  
and Others . .... Respondents.

Present:

Mr. Piyush Garg, learned counsel for the applicant in C482 No. 1314 of 2023.

Mr. G.S. Sandhu, learned Additional Advocate General for the State.

Mr. Saurabh Kumar Pandey and Mrs. Manisha Bhandari, learned counsel for the respondent.

Mr. Aditya Singh, learned counsel for the applicant in C482 No. 1281 of 2015.

Mr. Lalit Sharma, learned counsel for the C.B.I.

Ms. Shweta Sharma, learned counsel for respondent no. 3 in C482 No. 1281 of 2015.

**Hon'ble Mr. Justice Rakesh Thapliyal, J.**

1. Instant C482 petition has been preferred by the applicant challenging the order dated 22.06.2023, whereby, the criminal revision preferred by the respondent was allowed and the matter was remanded back to the concerned Magistrate to decide the protest petition afresh.

2. The brief facts as pointed out by learned counsel for the applicant Mr. Piyush Garg is that a complaint was made to the Director General of Police on 05.04.2013 with certain allegations against the applicant and on such complaint the DGP ordered for a preliminary enquiry to be conducted by the SSP, Nainital and after holding preliminary enquiry the SSP Nainital submitted its enquiry report by giving finding that all the allegations as alleged in the complaint are false and under a conspiracy. Mr. Piyush Garg argued that the complaint was made without lodging the

FIR and even no such application was moved before the concerned Magistrate under Section 156(3) of Cr.P.C. despite this the DGP entertained and ordered for preliminary enquiry. He submits that despite the fact that the complaint made to the DGP was enquired by the SSP, Nainital, by submitting a preliminary enquiry report and all allegations were found false a First Information Report was lodged at P.S. Haldwani on 09.05.2023 with the same allegations for the offences punishable under Sections 326, 376 and 506 of IPC. He submits that during investigation of the said FIR the victim/complainant made an application to the Chief Justice of India on 17.06.2023, the copy of which was also addressed to the then Hon'ble the Chief Justice of the High Court. Hon'ble the Chief Minister and other officials for seeking permission for "euthanasia" in which after taking suo moto cognizance WPCRL No. 1047 of 2013 was registered in which on 04.09.2013 this court directed to the respondents to inform whether the statement of the victim under Section 164 of Cr.P.C was recorded or not.

3. In compliance to the direction of the High Court the then DGP filed the counter affidavit informing that the complainant is not cooperating with the investigation for recording her statement under Section 164 of Cr.P.C. though twice summons were issued and the concerned official also visited her house but she has not come forward to get her statement to be recorded and thereafter, on completion of the investigation the final report was submitted on 31.12.2013. Thereafter against the acceptance of the final report the protest petition was filed by the complainant/victim and the learned Magistrate rejected the protest petition by accepting the final report by order dated 15.09.2025. Thereafter, the respondent/complainant preferred criminal revision against the order rejecting the protest petition and acceptance of the F.R.

before the learned Session Judge, Nainital. In the meantime an application was moved under Section 391 of Cr.P.C by the victim in the pending proceeding of protest petition she prayed for taking certain additional documents on record. The application moved under Section 391 of Cr.P.C. for taking additional document on record was allowed by the revisional court on 16.05.2016 against which a C482 petition was filed before this court and the same was disposed of finally on 16.06.2016 with this observation that the matter is still pending before the Revisional Court and the parties can take all plea before the Revisional Court. Thereafter, on 22.06.2023 the Revisional Court allowed the revision and remanded the matter back to the Magistrate to decide the protest petition afresh and being aggrieved with the same instant C482 petition has been filed.

4. It is argued by Mr. Piyush Garg that the learned Magistrate while allowing the revision exceeded his power in jurisdiction while taking cognizance on the additional document, hence, the order impugned can not sustain and is liable to be quashed. He also argued that the additional documents, which were placed before the revisional court by way of moving an application under Section 391 of Cr.P.C. was never been the part of the investigation, therefore, there was no any occasion on the part of the Revisional Court to take cognizance on those documents. He further argued that the revisional court while setting aside the order of the Magistrate rejecting the protest petition by accepting the final report have not dealt with since there is no finding that there is what perversity is the order rejecting the protest petition.

5. Apart from this, he submits that a specific plea was taken before the Revisional Court by advancing the arguments that the additional documents are not the part of the investigation,

therefore, at this stage particularly when the respondent/complainant never came forward for recording her statement under Section 164 of Cr.P.C. those documents cannot be taken into consideration but the arguments as advanced in respect of the admissibility of those documents placed on record by way of moving an application under Section 391 of Cr.P.C. were not at all dealt with by the Revisional Court.

6. He further argued that the revisional court has no power to take the additional documents by invoking Section 401(1) of Cr.P.C. since the subject matter was relating to the outcome of the investigation and not in respect of the outcome of any trial and since in this particular case the trial was never been commenced as the final report was filed, therefore, for taking additional documents by invoking Section 401 of Cr.P.C. is completely beyond the scope of Section 401.

7. In addition to this, Mr. Piyush Garg also argued by referring the CDR location of the mobile number of the applicant as well as the victim and one third mobile number which according to Mr. Piyush Garg does not belong to the applicant. He submits that even as per the CDR report the entire story as alleged in the FIR is nothing but a concocted story, which is evident from the fact that in respect of the same complaint a preliminary enquiry was done by the SSP, Nainital and the allegation as alleged were found to be false. He further argued that even as per the CDR report the location of the physical presence of the applicant and the complainant victim were not found in the same location since CDR only gives reference of the location of the mobile tower.

8. In one of the connected petition, which was filed by the respondent/complainant, the applicant who is the victim praying for transfer of the investigation to the CBI in which Mr. Aditya

Singh is appearing for the applicant, who is the complainant/victim in the present C482 petition and he has advanced his arguments in response to the arguments of Mr. Piyush Garg by submitting that for all purposes by invoking power under Section 399 read with Section 401 of Cr.P.C. the procedure as laid down under Chapter XXIX of Cr.P.C. were adopted while allowing the application under Section 391 of Cr.P.C. for the purposes of taking the additional document on record. He submits that certain procedure under Chapter XXIX were borrowed by the Legislature and that is the reason the revisional court while exercising the power conferred by Section 401 of Cr.P.C. allowed the application under Section 391 of Cr.P.C. and taken those documents on record.

9. Apart from this, he also argued that acceptance of final report is akin to acquittal therefore while exercising revisional jurisdiction the revisional court could not have converted the acquittal into conviction.

10. Mrs. Manisha Bhandari also advanced her arguments by submitting that the order impugned in any manner does not prejudice to the applicant and since the matter is only remanded back to the concerned court to decide the protest petition afresh, therefore, there is no illegality in the order impugned.

11. Put up this matter for rest of the arguments on 23.09.2025.

**(Rakesh Thapliyal, J.)**

**18.09.2025**

PR