IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Miscellaneous Application No. 1314 of 2023
Under Section 482 Cr.P.C.

Pramendra Dobal. …… Applicant.

Versus

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

With

Criminal Miscellaneous Application No. 1281 of 2015
Under Section 482 Cr.P.C.

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 with Mr. Himanshu Sain and Mr. Deepak Bhardwaj, learned Brief Holder for the State.
Mr. Saurabh Kumar Pandey and Mrs. Manisha Bhandari, learned counsel for the respondent in C482 No. 1314 of 2023.
Mr. Aditya Singh, learned counsel for the applicant in C482 No. 1281 of 2015.
Mr. Arvind Vashistha, learned senior counsel for the respondent in C482 No. 1281 of 2015.
Mr. Lalit Sharma, learned counsel for the C.B.I.

Hon'ble Mr. Justice Rakesh Thapliyal, J.

1. Mr. Piyush Garg, learned counsel for the applicant, argued at length by placing reliance on various judgments of the Hon'ble Apex Court as well as of the Allahabad High Court and by placing reliance he argued that the revisional court exceeded its power and jurisdiction by taking cognizance on additional documents, which were never been part of the investigation. He submits that the Magistrate concerned while rejecting the protest petition considered all the materials collected by the Investigating Officer while submitting the final report; however, the revisional

court by allowing the application under Section 391 of Cr.P.C. accepted the additional documents, which infact were not part of the investigation. He submits that the order allowing the application under Section 391 of Cr.P.C. was challenged by the applicant in another C482 petition No. 652 of 2016, wherein, the liberty was given to the present applicant to raise all submissions before the court concerned and the relevancy of the documents cannot be examined at this stage since the revision is pending for adjudication.

2. In reference to the issue with regard to scope of revisional he further placed reliance of another judgment of the Hon'ble Apex Court in the case of **Vikas Rathi vs. State of U.P. and Another** (2023) SCC Online SC 211 by giving reference of paragraph 15, which is quoted hereinunder:

> "15. One of the arguments raised by learned counsel appearing for the parties was that in the case in hand, the High Court instead of appreciating the material placed on record by the parties in the form of evidence to find out as to whether a case was made out for summoning of the appellant as an additional accused, remitted the matter back to the trial court for consideration afresh. Remand in such a matter will only result in prolonging the litigation. The High Court only recorded that reasons assigned by the trial court for rejecting the application were not sufficient. To avoid delay, it would have been proper exercise of power in case the High Court would have considered the material and opine as to whether a case was made out for summoning of additional accused. Whatever reasons have been recorded by the trial court in the order so passed, may not have been happily worded to the satisfaction of the High Court, but that error could have been corrected in exercise of revisional power."

3. One more judgment has also been relied upon i.e. in the case of **SanjaySinh Ramrao Chavan vs. Dattatray Gulabrao Phalke and Others** (2015) 3 SCC 123, paragraph 14 of which is quoted hereinbelow:

> "14. In the case before us, the learned Magistrate went through the entire records of the case, not limiting to the report filed by

> the police and has passed a reasoned order holding that it is not a fit case to take cognizance for the purpose of issuing process to the appellant. Unless the order passed by the Magistrate is perverse or the view taken by the court is wholly unreasonable or there is nonconsideration of any relevant material or there is palpable misreading of records, the revisional court is not justified in setting Page 16 16 aside the order, merely because another view is possible. The revisional court is not meant to act as an appellate court. The whole purpose of the revisional jurisdiction is to preserve the power in the court to do justice in accordance with the principles of criminal jurisprudence. Revisional power of the court under Sections 397 to 401 of Cr.PC is not to be equated with that of an appeal. Unless the finding of the court, whose decision is sought to be revised, is shown to be perverse or untenable in law or is grossly erroneous or glaringly unreasonable or where the decision is based on no material or where the material facts are wholly ignored or where the judicial discretion is exercised arbitrarily or capriciously, the courts may not interfere with decision in exercise of their revisional jurisdiction."

4. He further argued that so far as the necessity of the statement recorded under Section 164 of Cr.P.C. of the victim is concerned, recording of such statement is not so fatal and will not vitiate the investigation in view of Section 460 and 461 of Cr.P.C. In a reference to the relevancy of the statement recorded under Section 164 of Cr.P.C. he placed reliance in Hon'ble Apex Court's decision in the case of **Vineet Kumar and Others vs. State of Uttar Pradesh and Another** (2017) 13 SCC 369 by giving reference to paragraphs 40, 40.3 and 40.4, which reads as under:

> "40. Reference to the judgment of this Court in Prashant Bharti vs. State(NCT of Delhi), 2013 (9) SCC 293, is relevant for the present case. In the above case the complainant lady aged 21 years lodged an FIR under Section 328 and 354 IPC with regard to the incident dated 15.02.2007. She sent a telephonic information on 16.02.2007 and on her statement FIR under Sections 328 and 354 IPC was registered against the appellant. After a lapse of five days on 21.02.2007 she gave a supplementary statement alleging rape by the appellant on 23.12.2006, 25.12.2006 and 01.01.2007. Statement under Section 164 Cr.P.C. of the prosecutrix was recorded. Police filed charge-sheet under Section 328, 324 and 376 IPC. Charge-sheet although mentioned that no proof in support of crime under Section 328/354 could be found. However, on the ground of statement made under Section 164 Cr.P.C. charge-sheet was submitted.

40.3 The appeal was filed against the aforesaid judgment of the High Court by the accused contending that there was sufficient material collected in the investigation which proved that allegations were unfounded and the prosecution of the appellant was an abuse of process of the Court. In paragraph 23 this Court noted several circumstances on the basis of which this Court held that judicial conscience of the High Court ought to have persuaded it to quash the criminal proceedings. This Court further noticed that Investigating Officer has acknowledged, that he could not find any proof to substantiate the charges. The charge-sheet had been filed only on the basis of the statement of the complainant/prosecutrix under Section 164 Cr.P.C. In paragraphs 24 and 25 of the judgment following was stated:

> "24. Most importantly, as against the aforesaid allegations, no pleadings whatsoever have been filed by the complainant. Even during the course of hearing, the material relied upon by the accused was not refuted. As a matter of fact, the complainant/prosecutrix had herself approached the High Court, with the prayer that the first information lodged by her, be quashed. It would therefore be legitimate to conclude, in the facts and circumstances of this case, that the material relied upon by the accused has not been refuted by the complainant/prosecutrix. Even in the charge sheet dated 28.6.2007, (extracted above) the investigating officer has acknowledged, that he could not find any proof to substantiate the charges. The charge-sheet had been filed only on the basis of the statement of the complainant/prosecutrix under Section 164 of the Cr.P.C.
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> 25. Based on the holistic consideration of the facts and circumstances summarized in the foregoing two paragraphs; we are satisfied, that all the steps delineated by this Court in Rajiv Thapar's case (supra) stand -satisfied. All the steps can only be answered in the affirmative. We therefore have no hesitation whatsoever in concluding, that judicial conscience of the High Court ought to have persuaded it, on the basis of the material available before it, while passing the impugned order, to quash the criminal proceedings initiated against the accused-appellant, in exercise of the inherent powers vested with it under Section 482 of the Cr.P.C. Accordingly, based on the conclusions drawn hereinabove, we are satisfied, that the first information report registered under Sections 328, 354and 376 of the Indian Penal Code against the appellant-accused, and the consequential chargesheet dated 28.6.2007, as also the framing of charges by the Additional Sessions Judge, New Delhi on 1.12.2008, deserves to be quashed. The same are accordingly quashed."

40.4 Thus, above was the case where despite statement under Section 164 Cr.P.C. by prosecutrix the Court referring to material collected during investigation had held that the case was fit where the High Court ought to have quashed the criminal proceedings."

5. Mr. Piyush Garg further advance his submission that statement under Section 164 of Cr.P.C. has no relevance and bearing to the findings and the conclusion arrived at the investigation stage and placed reliance to the judgment of the Hon'ble Apex Court in the case of **Ajai Alias Ajju vs. State of Uttar Pradesh** (2023) SCC Online SC 144 by giving reference of paragraph 22 and 23, which are being reproduced herein as under:

> "22. Non-examination of Ms Rashmi and Horam, father of Vijay Pal Singh also has no material bearing. It is the discretion of the prosecution to lead as much evidence as is necessary for proving the charge. It is not the quantity of the witnesses but the quality of witnesses which matters. Smt Pinky (PW-1) was the injured witness having received grievous and life-threatening injuries. We are not impressed by this argument also.
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> 23. Non-examination of the statement under section 164 CrPC also has no relevance or bearing to the findings and conclusions arrived at by the courts below. It was for the Investigating Officer to have got the statement under section 164 CrPC recorded. If he did not think it necessary in his wisdom, it cannot have any bearing on the testimony of PW-1 and the other material evidence led during trial."

6. He further advance his arguments by submitting that the revisional court has no power to take additional document on record and then remand the matter to the Trial Court to examine those records and in reference to this he placed reliance in Hon'ble Apex Court's decision in the case of **Vishnu Kumar Tiwari vs. State of Uttar Pradesh and Another** (2019) 8 SCC 27 by giving reference of paragraph 27, 28, 30, 32, 35 and 36, which are quoted as under:

> "27. It is undoubtedly true that before a Magistrate proceeds to accept a final report under Section 173 and exonerate the accused, it is incumbent upon the Magistrate to apply his mind to the contents of the protest petition and arrive at a conclusion thereafter. While the Investigating Officer may rest content by producing the final report, which, according to him, is the culmination of his efforts, the duty of the Magistrate is not one limited to readily accepting the final report. It is incumbent upon

him to go through the materials, and after hearing the complainant and considering the contents of the protest petition, finally decide the future course of action to be, whether to continue with the matter or to bring the curtains down.

28. In this case, the High Court proceeded on the basis, as we have noticed, that the Magistrate has not taken into consideration the protest petition and it was his pious duty to consider the facts mentioned in the petition. We have examined the order passed by the Magistrate. He does refer to the protest petition. The contents therein are undoubtedly noticed. Magistrate says that he has gone through the First Information Report. He finds that the complainant is not an eyewitness in regard to the death of his daughter. He recorded that he has gone through the statements of witnesses given under Section 161. We may notice that the following findings were entered in regard to the case of torture committed against the complainant's daughter:

> "… First of all I have gone through the statement of Sh Shiv Shankar Ojha who is complainant in this case. Although this witness has partly favoured the incident but here it is pertinent to mention that at the time of death of deceased Jaya, this witness was not present. When it was asked from this witness that whether after you received information of torture committed to you daughter, you had made any application anywhere or you had informed this through any relation etc. In reply to this question, he has stated that 'no'. I have also duly gone through the statement of Smt. Shakuntala Devi mother of deceased. Mother of deceased has given statement to the investigating officer that my son in law is working in Haryana in a private job."

30. The Chief Judicial Magistrate, in fact, proceeded to take the view that Magistrate has to take cognizance on the basis of the statements of the witnesses recorded by the Investigating Officer and materials collected. He further finds that if cognizance is taken on the basis of protest petition and documents annexed, that is illegal. It is after that it was found that the deceased died due to her illness and no prima facie case was made out against the accused persons.

32. In the facts of this case, the High Court concluded that the Magistrate has not considered the protest petition by the second respondent/complainant. Had it been the case where protest petition had not been considered at all, it may have been open to the court to came to the conclusion 7 (2015) 5 SCC 423 8 (2003)6 SCC 675 that an illegality had been committed in exercise of its jurisdiction to deal with the final report. But it is another matter when the Magistrate has undoubtedly considered the protest petition to direct the court again to consider the matter for action on the same, and for that purpose, to set aside the proceedings.

35. We have also gone through the protest petition along with the counter affidavit. No doubt, in paragraph 2, there is a general reference to demands for property from the deceased and father of the deceased and torture. Paragraphs 3 to 15 thereafter relate to the circumstances relating to the death of the daughter of the second respondent. In the said paragraphs, the case is sought to be made out that forged documents were produced before the Investigating Officer. Affidavits of the mother and brother of the deceased, inter alia, were also filed to project the case of forgery. For instance, in the affidavit of the mother of the deceased, she claims that she has not gone to the hospital on the 9th and 10th of October, 2007, whereas, according to the statement under Section 161 of the Code, she is alleged to have stated that on 09.10.2007, the deceased was admitted at Priti Hospital by them which apparently includes the mother. We have noticed that in regard to that no doubt the Chief Judicial Magistrate has relied upon judgment in Mohammed Yusuf and others v. State of Uttar Pradesh and others 9 and taken the view that if cognizance is taken on the basis of the protest petition and the documents annexed with, that is illegal. He also took the view that the Magistrate has to take cognizance on the basis of statements of witnesses recorded by the Investigating Officer, in the case diary and the material collected during investigation.

36. A learned Single Judge of the High Court of Allahabad, in the aforesaid decision, had this to say in paragraph 11:

> "11. Where the Magistrate decides to take cognizance under Section 190(1)(b) ignoring the conclusions reached at by the Investigating Officer and applying his mind independently, he can act only upon the statements of the witnesses recorded by the police in the case-diary and material collected during investigation. *It is not permissible at that stage to consider any material other than that collected by the investigation Officer. In the instant case the cognizance was taken on the basis of the protest petition and accompanying affidavits. The Magistrate should have adopted the procedure of complaint case under Chapter XV of the Code of Criminal Procedure and recorded the statements of the complainant and the witnesses who had filed affidavits under Sections 200 and 202 Cr.P.C. The Magistrate could not take cognizance under Section 190(1)(b) Cr.P.C. on the basis of protest petition and affidavits filed in support thereof. The Magistrate having taken into account extraneous material i.e. protest petition and affidavits while taking cognizance under Section 190(1)(b) Cr.P.C. the impugned order is vitiated."* (Emphasis supplied)"

7. Mr. Piyush Garg also placed reliance of another judgment of the Hon'ble Apex Court in the case of **Mohammad Yusuf vs. State of U.P.** 2017 SCC Online 1283 and submits that while entertaining a protest petition the Magistrate should take

cognizance only on the materials collected during investigation. He submits that on an application of the victim for seeking permission for WPCRL No. 1047 of 2013 was registered by the High Court, wherein, on 04.09.2013 the Coordinate Bench of this court directed the Director General of Police to file an affidavit by stating therein the status of the investigation as well as to state as to whether any departmental proceeding was drawn against the officer concerned and whether at any point of time the statement of the prosecutrix were recorded under Section 164 of Cr.P.C. and if not why? In compliance thereof the DGP filed an affidavit by giving reference of two notices dated 17.07.2013 and 11.09.2013 issued under Section 160 of Cr.P.C., wherein, an endorsement was made by the concerned police officer. He submits that despite the notice issued under Section 160 of Cr.P.C. the prosecutrix never turned up for recording her statement under Section 164 of Cr.P.C. He submits that WPCRL No. 1047 of 2023 was heard on several dates and for proper assistance the Amicus Curiae was also appointed to address on behalf of the prosecutrix but the prosecutrix herself chooses to engage another counsel of her own choice and in the meantime the investigation was completed by filing final report and subsequently WPCRL No. 1047 of 2013 was disposed of finally on 19.03.2014 by giving liberty to the prosecutrix/complainant in view of the statement made on her behalf to challenge the final report by way of protest petition. He submits that during the entire proceeding of WPCRL No. 1047 of 2013 the victim never came forward with a request to record her statement under Section 164 of Cr.P.C. though on some of the dates she was present in the court. He also submits that while disposing of WPCRL No. 1047 of 2013 even no such suggestion or request was made before the Coordinate Bench and only this much statement was given on her behalf that she wants to challenge the final report by way of protest petition. Now at

this juncture it is necessary to give reference of some relevant dates, which are as follows:

(i) 31.12.2013 final report filed.

(ii) 28.05.2014 the protest petition filed.

(iii) 15.09.2015 the final report was accepted by rejecting the protest petition.

(iv) 07.10.2015 criminal revision against order dated 15.09.2015 was preferred.

8. On the same date when the criminal revision was filed under Section 482 of Cr.P.C. was also filed by the victim bearing Criminal Miscellaneous Application No. 1281 of 2015 with the following relief:

> "It is, therefore, most humbly prayed that this Hon'ble Court may graciously be pleased to direct the Respondent No 2-CBI to re-investigate the case in connection with FIR being Case Crime No. 259/2013 dated 09.05.2013 lodged under Sections 376, 328, 506 1.P.C. at Police Station Haldwani, otherwise the applicant shall suffer irreparable loss and injury.
>
> It is further prayed that in the peculiar facts and circumstances of the present case, it would be expedient in the interest of justice that during investigation, the Respondent No. 3 be directed to not to hold the office of Additional Superintendent of Police, otherwise the applicant will suffer irreparable loss and injury.
>
> As an interim measure, it is most respectfully prayed that the Superintendent of Police, Haldwani be directed to ensure that the applicant and her family may not be threatened, humiliated and pressurized in connection with the above-noted case and they may be provided adequate protection and safety as directed by the Hon'ble Supreme Court, in the interest of justice."

9. With regard to the interpolation of time in the FIR Mr. Garg submits that a written complaint was made by the victim before the DGP and on that written complaint the DGP ordered for preliminary enquiry and based on the preliminary enquiry report

the FIR was registered and the copy of the chik FIR was supplied to the victim, which is evident from the fact that the victim herself make an endorsement of receipt by putting her signature in the FIR. He argued that with regard to the interpolation of time in the FIR the victim never report either before the High Court and the first time while filing the protest petition the issue with regard to the interpolation in the FIR was raised though no supporting document was filed, however the supporting documents were filed only at the stage of revision. He pointed out that in the preliminary enquiry ordered DGP the date, which is mentioned in the written complaint was reiterated.

10. At this juncture, Mr. Arvind Vashistha, who appears for respondent no. 3 in subsequent C482 petition submits that C482 petition No. 1281 of 2015 is not maintainable on two accounts, firstly, the order accepting the final report was already challenged by the victim in criminal revision and, secondly, the order rejecting the protest petition is not challenged in this petition. Mr. Vashistha further submits that as on date in fact the C482 Application No. 1281 of 2015 is now rendered infructuous since the revision has been allowed, which is now under challenge in C482 application No. 1314 of 2023 and the applicant cannot be permitted to avail two remedies, one by way of a revision, another one, by way of a petition under Section 482 of Cr.P.C. He further pointed out in this petition on 29.09.2022 a specific question was asked from the learned counsel for the applicant that why the petition should be kept pending when the order rejecting the protest petition is still pending in the revision and in case the revision is allowed and the court take cognizance what would be its fate and whether the court can still after cognizance passed an order for investigation.

11. Learned counsel for the parties submits that the record relating to the protest petition be also summoned. In view of such submission the record of protest petition as well as record of revision be summoned. The Registry is directed to send the requisition.

12. Put up this matter on 19.11.2025.

(Rakesh Thapliyal, J.)

10.11.2025
PR