2025:UHC:6235

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application U/s 482 No. 1310 of 2023

17 July, 2025

Gurdev Singh --Applicant

Versus

State Of Uttarakhand and Another --Respondents

Presence:-

Ms. Ananya Jain, learned counsel holding brief of Mr. Sandeep Kothari, learned counsel for the applicant.

Mr. S.S. Chauhan, learned D.A.G. with Mr. Vikas Uniyal, learned Brief Holder for the State of Uttarakhand/ respondent No.1.

Mr. Akshay Pradhan, learned counsel for respondent No.2.

Hon'ble Pankaj Purohit, J. (Oral)

Heard learned counsel for the parties.

2. By means of the present C482 application, the applicant has challenged cognizance order dated 07.02.2023 passed in Criminal Case No.59 of 2021 *State of Uttarakhand Vs. Gurdev*, and summoning order dated 29.05.2023 in Criminal Case No.8 of 2023, *Km. Raina Vs. Gurdev*, under Section 354-D IPC, passed by learned Judicial Magistrate, Purola, District Uttarkashi, whereby, the final report has been rejected, protest petition has been registered as a complaint case and the applicant has been summoned, along with the entire proceedings of the aforesaid criminal case.

3. The facts in brief are that the respondent No.2 was working as Assistant Boring Technician in Minor Irrigation, Sub-division Purola, District Uttarkashi while the applicant was working as Assistant Engineer in Minor Irrigation, Sub-division Naugaon, District Uttarkashi. The respondent No.2 had filed a complaint before the Executive Engineer of

the concerned division on 13.09.2018 and on the said complaint, departmental inquiry was conducted. Thereafter, the respondent No.2 lodged the FIR on 18.09.2019 against the applicant stating that the applicant used to send obscene messages to her from his mobile.

4. Learned counsel for the applicant submits that there was nothing found against the applicant in the departmental inquiry. She submits that the respondent No.2 had asked for the applicant's mobile phone on the pretext of there was no recharge on her phone and respondent No.2 wants to talk urgently with her parents, probably, at that time, respondent No.2 had sent some messages from the mobile phone of applicant to her mobile phone inasmuch as it might have been deleted from his phone.

5. Learned counsel for the applicant contends that after lodging of the FIR, final report was submitted and the matter was referred for further investigation by the orders of higher officers of Police and during this time, the applicant's phone was also sent to CFSL, Chandigarh for forensic examination, however, again no evidence could be substantiated and a final report was submitted, to which the notices were issued to the respondent No.2. Thereafter, respondent No.2 had submitted a protest petition on 28.08.2021 before the learned Judicial Magistrate, Purola, District Uttarkashi and without considering the overall facts and circumstances of the case, learned Magistrate had taken the cognizance on 07.02.2023 and registered the protest petition as a complaint case. Learned Magistrate had proceeded to pass the summoning

order on 29.05.2023, whereby, the applicant was summoned to face the trial under Section 354-D IPC.

6. It is contended by learned counsel for the applicant that the summoning order passed by the learned Magistrate is abuse of process of law and is not sustainable for the simple reason that the manner in which the inquiry at different level have been carried out and in every inquiry, when the allegations could not be substantiated, on the same material, taking cognizance is absolutely erroneous inasmuch as it is an admitted position that under Section 202 Cr.P.C., no other evidence has been tendered by the respondent No.2 in order to support the case.

7. It is further contended by her that the provisions contained in Section 468(2)(c) Cr.P.C. states that the cognizance could not have been taken beyond a period of three years for an offence punishable under Section 354-D. In the present set of circumstances, the alleged offence had taken place on 30/31.08.2018 and the summoning order was passed on 29.05.2023 and at best it can be treated as 07.02.2023, but it is a time much beyond a period of three years and hence the cognizance taken by the learned Magistrate is barred by the provision of Section 468 Cr.P.C.

8. Per contra, learned State Counsel has supported the prosecution story and submits on the basis of its counter affidavit that allegations made in the FIR have been found to be proved and consequently the final report has been filed after collecting evidences. Thus, the cognizance order dated 29.05.2023 has been rightly passed by the learned Magistrate on the basis of the statement made by the respondent No.2-victim as

well as the Inquiry Report dated 02.07.2019.

9. Learned counsel for respondent No.2 has filed its counter affidavit and on the basis of it, he submits that the applicant is making a futile and baseless attempt to concoct a fig-leaf of a defense for his heinous and unconscionable act of stalking and harassing the respondent No.2. He further submits that a Court can throw out a complaint solely on the ground of delay, because, the question of delay in filing a complaint may be circumstance to be taken into consideration in arriving at the final verdict, but by itself, it affords no grounds for dismissing the complaint. Further, it is well established that rules of limitation pertain to domain of adjectival law and they operate only to bar the remedy but not to extinguish the right. That for the purpose of computing the period of limitation under Section 468 of Cr.P.C., the relevant date is the date of institution of prosecution and not the date on which the learned Magistrate took cognizance.

10. Learned counsel for the applicant filed its rejoinder affidavit and he submits that the initial complaint was considered by the Circle Officer, who is the rank of Deputy Superintendent of Police, District Uttarkashi, who post enquiry, has submitted the report and found that the allegations made against the applicant were not substantiated and further the internal complaint committee have also not given any conclusive finding regarding the allegations contained in the complaint of respondent No.2, however, the respondent No.2 had insisted for lodging of the FIR and consequently, the FIR was lodged.

11. Having heard the learned counsel for the applicants and on perusal of the FIR and other documents available on record, this Court finds that the arguments made by the learned counsel for the parties are a matter of evidence, which can only be looked into by the learned Trial Court at the time of trial when the evidence would be adduced by both the parties. Moreover, the argument of learned counsel for the applicant regarding the trial being time barred is also fallacious, as it is a settled position of law that computation of limitation is done from the lodging of FIR or filing of a complaint and it has no concern as to the date of taking cognizance. On perusal of the present factual matrix, it clearly shows that the complaint of alleged incident was filed before the Executive Engineer, Minor Irrigation Department, Uttarkashi, on 13.09.2018, on which, after departmental inquiry, FIR was registered on 18.09.2019 against the applicant. Both the complaint and the FIR was filed well within three years, on which cognizance was taken at a later stage on 07.02.2023. Thus, in no stretch of imagination, it can be said that the case of respondent No.2 was time barred. My view is further fortified by a judgment dated 04.06.2025 rendered by Hon'ble Apex Court in the case of ***Ghanshyam Soni Vs. State (Govt. of NCT of Delhi) and Another***, in Criminal Appeal No.2894 of 2025. For ready reference, the relevant Para Nos. 15 and 16 of the said judgment are quoted herein below:-

> "15. It is a settled position of law that for the computation of the limitation period under Section 468 Cr.P.C. the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. The dicta laid

down in the case of **Bharat Damodar Kale & Anr. v. State of Andhra Pradesh** makes it unequivocally clear that the Magistrate is well within his powers to take cognizance of a complaint filed within a period of three years from the date of the commission of offence as mandated under section 468 CrPC. The relevant portion is reproduced as under:

> *"50. The Code imposes an obligation on the aggrieved party to take recourse to appropriate forum within the period provided by law and once he takes such action, it would be wholly unreasonable and inequitable if he is told that his grievance would not be ventilated as the court had not taken an action within the period of limitation. Such interpretation of law, instead of promoting justice would lead to perpetuate injustice and defeat the primary object of procedural law.*
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> *51. The matter can be looked at from different angle also. Once it is accepted (and there is no dispute about it) that it is not within the domain of the complainant or prosecuting agency to take cognizance of an offence or to issue process and the only thing the former can do is to file a complaint or initiate proceedings in accordance with law, if that action of initiation of proceedings has been taken within the period of limitation, the complainant is not responsible for any delay on the part of the court or Magistrate in issuing process or taking cognizance of an offence. Now, if he is sought to be penalized because of the omission, default or inaction on the part of the court or Magistrate, the provision of law may have to be tested on the touchstone of Article 14 of the Constitution. It can possibly be urged that such a provision is totally arbitrary, irrational and unreasonable. It is settled law that a court of law would interpret a provision which would help sustaining the validity of law by applying the doctrine of reasonable construction rather than making it vulnerable and unconstitutional by adopting rule of litera legis. Connecting the provision of limitation in Section 468 of the Code with issuing of process or taking of cognizance by the court may make it unsustainable and ultra vires Article 14 of the Constitution.*
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> *52. In view of the above, we hold that for the purpose of computing the period of limitation, the relevant date must be considered as the date of filing of complaint or initiating criminal proceedings and not the date of taking cognizance by a Magistrate or issuance of process by a court. We, therefore, overrule all decisions in which it has been held that the crucial date for computing the period of limitation is taking of cognizance by the Magistrate/court and not of filing of complaint or initiation of criminal proceedings.*
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> *53. In the instant case, the complaint was filed within a period of three days from the date of alleged offence. The complaint, therefore, must be held to be filed within the period of limitation even though cognizance was taken by the learned Magistrate after a period of one year. Since the criminal proceedings have been quashed by the High Court, the order deserves to be set aside and is accordingly set aside by directing the Magistrate to proceed with the case and pass an appropriate order in accordance with law, as expeditiously as possible."*

16. The following observation in **Kamatchi v. Lakshmi Narayanan** also re-iterates the said position, and further holds that simply because the cognizance is taken at a later stage, but the Complaint was filed within the specified period from the commission of the offence, the Complainant cannot be put to prejudice and her Complaint cannot be discarded as time-barred.

> *"It is, thus, clear that though Section 468 of the Code mandates that 'cognizance' ought to be taken within the specified period from the commission of offence, by invoking the principles of purposive construction, this Court ruled that a complainant should not be put to prejudice, if for reasons beyond the control of the prosecuting agency or the complainant, the cognizance was taken after the period of limitation. It was observed by the Constitution Bench that if the filing of the complaint or initiation of proceedings was within the prescribed period from the date of commission of an offence, the Court would be entitled to take cognizance even after the prescribed period was over."*

12. Further, this Court under Section 482 of Cr.P.C. cannot embark upon a fact finding inquiry which can only be done by the learned Trial Court. This case does not fall in the 'rarest of rare' category for invoking the inherent powers of this Court.

13. Accordingly, the C482 application is dismissed.

14. Interim order dated 04.07.2023 stands vacated.

(**Pankaj Purohit, J**.)
17.07.2025

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