

# Devendra Kumar Sharma vs State Of Uttarakhand And Another on 7 May, 2022

**Author: Ravindra Maithani**

**Bench: Ravindra Maithani**

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application No. 488 of 2022

Devendra Kumar Sharma

..... Applicant

Vs.

State of Uttarakhand and another

..... Respondents

Present : Mr. Rajiv Sharma, Advocate for the petitioner.  
Mr. Lalit Miglani, A.G.A. for the State.

## JUDGMENT

Hon'ble Ravindra Maithani, J. (Oral) The challenge in this petition is made to the Chargesheet No. 05 of 2022 dated 05.04.2022 and the entire proceedings of Special Sessions Trial No. 36 of 2022, State v. Jagdish Chandra and others, under Sections 409, 420, 467, 468, 471, 477(a) IPC and Section 13(1)(c)(d)/13(2) of the Prevention of Corruption Act, 1988 and Section 13(1)(a) of Prevention of Corruption (Amendment) Act, 2018 read with Section 120-B IPC, pending in the court of Special Judge (Vigilance)/Additional Sessions Judge, 3rd, Dehradun ("the case").

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

3. The respondent no. 2 ("the informant") filed an FIR on 06.01.2022 under Sections 420, 467, 468, 477A & 120 B IPC, registered at P.S. Narendra Nagar, District Tehri Garhwal, against twelve persons. According to it, when irregularities in Treasury, Narendra Nagar were inquired, it revealed that the petitioner and eleven other named persons misappropriated the Government money to the tune of Rs. 2,48,46,829/-. It is this FIR, in which, after investigation, the chargesheet has been submitted.

4. Learned counsel for the petitioner would submit that the petitioner has wrongly been implicated in the case. He had never been concerned with the affairs of the Treasury. Learned counsel would

raise the following points in his submissions:-

(i) After lodging of the FIR, the petitioner filed writ petition seeking protection from arrest and it was granted. In order to defeat the order of the Court, chargesheet has been filed against him.

(ii) The petitioner has been linked with the scam, which never took place.

There is no legal evidence against the petitioner, in the chargesheet, which runs in more than 1000 pages.

(iii) The petitioner belongs to a good family; he is innocent. As soon as, he came to know about the deposit of money in his account, he refunded the same.

(iv) The petitioner is a retired Government servant.

(v) The petitioner is harassed by the police. Not only he, his family members are also harassed.

(vi) The petitioner has no role. In order

to gain cheap publicity, he has been implicated.

(vii) The petitioner was never employed in the Treasury.

(viii) The FIR is much belated in this case.

(ix) The FIR has been filed based on some departmental inquiry, which is one sided and ex parte. The departmental inquiry was conducted with regard to irregularities committed by the employees of the Treasury. The petitioner at no point of time was posted in the Treasury, Narendra Nagar.

(x) The delay in lodging the FIR is not explained.

(xi) The Hon'ble Supreme Court in a catena of decisions observed that if delay is not explained, it doubts the prosecution case.

(xii) If the money was deposited sometimes in the year 2018, why the FIR was lodged in the year 2022, when the petitioner had already been retired from service in the year 2020?

(xiii) The petitioner did not manipulate with any data.

(xiv) The money was allegedly deposited in the account of the petitioner and only thereafter he has been implicated in the case, without any basis.

(xv) In the year 2018, money was transferred in the account of the petitioner. He deposited it and warned the Treasury officials.

Thereafter, in the year 2019, money was not deposited in his account, but again in the year 2021, money was deposited in his account. He could not take fight to the treasury officials, because he was a retired official.

(xvi) Offence under Section 409 IPC is not made out at all, because in order to attract the provisions of Section 409 IPC, first and foremost, it has to be established that there has been some entrustment with the wrong doer, which is not in the instant case; money was never entrusted with the petitioner.

5. Learned counsel for the petitioner would further submit that at the most it could be civil transactions, it cannot be criminal. At the most, it is a case of theft.

6. In support of his contention, learned counsel for the petitioner has placed reliance on the principle of law as laid down by the Hon'ble Supreme Court in the case of *Sadhupati Nageswara Rao v. State of Andhra Pradesh*, (2012) 8 SCC 547.

7. In the case of *Sadhupati Nageswara Rao* (supra), the Hon'ble Supreme Court discussed the provisions of Section 409 IPC and observed as hereunder:-

"14. In order to prove the offence of criminal breach of trust which attracts the provision of Section 409 IPC, the prosecution must prove that one who is, in any manner, entrusted with the property, in this case as a dealer of fair price shop, dishonestly misappropriates the property, commits criminal breach of trust in respect of that property. In other words, in order to sustain conviction under Section 409 IPC, two ingredients are to be proved, namely,

(i) the accused, a public servant or a banker or agent was entrusted with the property of which he is duty-bound to account for; and

(ii) the accused has committed criminal breach of trust. What amounts to criminal breach of trust is provided under Section 405 IPC.

The basic requirement to bring home the accusations under Section 405 are the requirements to prove conjointly (i) entrustment, and (ii) whether the accused was actuated by dishonest intention

or not, misappropriated it or converted it to his own use to the detriment of the persons who entrusted it."

8. On the other hand, learned State Counsel would submit that all the arguments, which have been advanced on behalf of the petitioner are factual aspect of the matter, which can be gone into during trial. This Court cannot conduct a mini trial at this stage; public money was deposited in the account of the petitioner; the petitioner was a public servant in the year 2018, when the money was deposited in his account. He used the money for his personal purpose. Reference has been made of Annexure 2 to argue that, in fact, on 01.11.2018, when Rs. 6,80,000/- was deposited in the account of the petitioner, he transferred some amount to some other person and thereafter withdrew the amount on his own. Annexure 2 is, in fact, a passbook of the petitioner, which he himself has filed. It is argued that on various occasions, money was deposited in the account of the petitioner, which he withdrew on his own.

9. This is a petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code"). The jurisdiction is too wide to ensure the ends of justice. It is also much guided by the principles of law, as laid down by the Hon'ble Supreme Court in the catena of decisions. In the case of Indian Oil Corporation vs. NEPC India Ltd. and others, (2006)6 SCC 736, the Hon'ble Court observed as hereunder:-

"12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few-- Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , State of Bihar v. Rajendra Agrawalla [(1996) 8 SCC 164 : 1996 SCC (Cri) 628] , Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] , Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615] , Hridaya Ranjan Prasad Verma v. State of Bihar [(2000) 4 SCC 168 :

2000 SCC (Cri) 786] , M. Krishnan v. Vijay Singh [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] . The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while

examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

10. The position of law is settled that if prima facie case is disclosed, generally no interference is warranted unless there are compelling circumstances to do so.

11. At this stage, one more argument of the petitioner may be noted. It has been argued on behalf of the petitioner that finding merits in the case of the petitioner, he was given protection against arrest.

12. The merits of the case are to be independent to what order is passed in any other case, unless there is a conclusive finding with regard to the implication of the petitioner. There is no such conclusive finding of this Court at any stage.

13. The FIR undoubtedly is based on some inquiry conducted by the Senior Treasury Officer, New Tehri. It is part of the FIR. According to it, Rs. 48,71,099/- was deposited in the account of the petitioner. The petitioner himself has filed the statement of the witnesses recorded during investigation. There are statements of Rajendra Prasad Baluni, the Bank Manager, who had verified the deposit of amount in the accounts of the petitioner and others. There are other witnesses also. Pramod Singh Negi, the another witness, who was Branch Manager, SBI, Narendra Nagar, has also stated about the deposit of money.

14. Admittedly, the petitioner was not working in the Treasury itself. The chargesheet itself records that the petitioner is a retired Senior Assistant in the office of District Probation Officer, Narendra Nagar. According to the petitioner, he was superannuated on 30.09.2020.

15. At this stage, deeper scrutiny of any material is to be avoided. To the extent of examining the nature of prima facie case, the Court is perusing the record. Learned State Counsel has referred to Annexure 2, passbook of the petitioner, to argue that on 01.11.2018, Rs. 6,80,000/- was deposited in the account of the petitioner and subsequent thereto, he had withdrawn various amounts on his own. Reference has been made to other deposits as well.

16. It is true that the petitioner was not working with the Treasury. It is not the case against the petitioner that he was working with the Treasury. The chargesheet has been filed under Section 120-B IPC also. According to the Investigating Officer, it is a case of criminal conspiracy. The chargesheet records that the main accused, under conspiracy with other accused, by misusing their position misappropriated the Government money by transmitting the amount in their, their family members and other accounts. The chargesheet also records that work distribution report, data centre report, public inquiry report, beneficiary report of each of the beneficiary, statements, bank statements, treasury transactions, verification of deposit of money in the account qua UTR Numbers were examined during investigation and thereafter it was concluded that the petitioner and others committed offence.

17. Delay in lodging the FIR itself is not a ground to quash the proceedings. It may have its bearing, but instant is a case of misappropriation of Government money under a design, under a conspiracy. The petitioner admittedly retired in the year 2020. Money was deposited in his account in the year 2018. As stated, on 01.11.2018, Rs. 6,80,000/- was deposited in his accounts and on the next day, according to annexure 2, Rs. 3,50,000/- was transmitted in the account of Vinay Kumar Chaudhary, co-accused, who was working as Assistant Accountant in Treasury, Narendra Nagar.

18. There may be various questions that need to be answered. As to why the amount was deposited in the account of the petitioner on 01.11.2018 and on other occasions? If the petitioner came to know that Rs. 6,80,000/- has wrongly been deposited in his account on 01.11.2018, why did he not return the entire amount on the same date? Why only Rs. 3,50,000/- was transmitted in the account of Vinay Kumar Chaudhary, the co-accused, who was working in the Treasury? But, this and many more questions cannot be examined by this Court. This Court cannot held a mini trial.

19. The FIR is based on some internal inquiry report. It is a case that huge Government money was deposited in the account of the petitioner, which, according to the prosecution, was used by the petitioner for his personal purpose.

20. The FIR itself makes out a case, which was found true after investigation, based on examination of various records and the statements of the witnesses. Therefore, this Court is of the view that there is no reason to make any interference. Accordingly, the petition deserves to be dismissed at the admission stage itself.

21. The petition is dismissed in limine.

(Ravindra Maithani, J.) 07.05.2022 Avneet/