

# Atul Salar And Others ... Applicants vs State Of Uttarakhand And Others on 20 December, 2022

**Author: Sharad Kumar Sharma**

**Bench: Sharad Kumar Sharma**

HIGH COURT OF UTTARAKHAND  
AT NAINITAL

Criminal Misc. Application No. 610 of 2021  
(Under Section 482 of Cr.P.C.)  
With  
MCRC/3/2022 for Recall Application  
IA/4/2022 for Stay Application  
IA/5/2022 for Delay in Recall Application

Atul Salar and others	...	Applicants
	Vs.	
State of Uttarakhand and Others	...	Respondents

And

Criminal Misc. Application No. 719 of 2021  
(Under Section 482 of Cr.P.C.)  
With  
MCRC/2/2022 for Recall Application  
IA/3/2022 for Stay Application  
IA/4/2022 for Delay in Recall Application

Praveen Kumar and others	...	Applicants
	Vs.	
State of Uttarakhand and Others	...	Respondents

And

Criminal Misc. Application No. 720 of 2021  
(Under Section 482 of Cr.P.C.)  
With  
MCRC/2/2022 for Recall Application  
IA/3/2022 for Stay Application  
IA/4/2022 for Delay in Recall Application

Talib Ali and others	...	Applicants
	Vs.	
State of Uttarakhand and Others	...	Respondents

And

Criminal Misc. Application No. 721 of 2021  
(Under Section 482 of Cr.P.C.)  
With  
MCRC/2/2022 for Recall Application  
IA/3/2022 for Stay Application  
IA/4/2022 for Delay in Recall Application  
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Sunil Kumar and others ... Applicants  
Vs.  
State of Uttarakhand and Others ... Respondents

And

Criminal Misc. Application No. 722 of 2021  
(Under Section 482 of Cr.P.C.)  
With  
MCRC/2/2022 for Recall Application  
IA/3/2022 for Stay Application  
IA/4/2022 for Delay in Recall Application

Mukesh Saini and others ... Applicants  
Vs.  
State of Uttarakhand and Others ... Respondents

And

Criminal Misc. Application No. 847 of 2021  
(Under Section 482 of Cr.P.C.)  
With  
MCRC/3/2022 for Recall Application  
IA/4/2022 for Stay Application  
IA/5/2022 for Delay in Recall Application

Rohit Sharma and Another ... Applicants  
Vs.  
State of Uttarakhand and Another ... Respondents

And

Criminal Misc. Application No. 889 of 2021  
(Under Section 482 of Cr.P.C.)  
With  
MCRC/2/2022 for Recall Application  
IA/3/2022 for Stay Application  
IA/4/2022 for Delay in Recall Application

Navodit Salar and Another ... Applicants



(i) In C482 No. 610 of 2021, the recall has been preferred on 06.12.2022, seeking recall of the judgment and order dated 01.07.2021, as it has been passed by the coordinate Bench of this Court, while exercising its powers under Section 320 of CrPC, by compounding the offence in relation to Criminal Case No. 75 of 2021, State Vs. Deepanshu & others. The Recall Application, which has been preferred, is delayed by 492 days.

(ii) In the second C482 Application No. 719 of 2021, the recall application, which too has been preferred on 06.12.2022, the applicant Uttarakhand Subordinate Services Selection Commission has sought a recall of the judgment dated 09.04.2021, which too was an order passed by the coordinate Bench of this Court on a Compounding Application, which was preferred under Section 320 of CrPC, which has been preferred along with the Delay Condonation Application, seeking condonation of 574 days delay.

(iii) The C482 Application No. 720 of 2021 stood disposed of by the coordinate Bench of this Court vide its judgment dated 09.04.2021, by compounding the offence in a Criminal Case No. 75 of 2021, on the basis of a Compounding Application which was preferred under Section 320 of CrPC, which stood adjudicated on 09.04.2021, which has been sought to be recalled by the Uttarakhand Subordinate Services Selection Commission, by filing an application for recall to this effect on 06.12.2022, along with the Delay Condonation Application, seeking condonation of 574 days of delay.

(iv) The C482 Application No. 721 of 2021, was instituted as a consequence of a challenge given to the proceedings of Criminal Case No. 290 of 2021, which has been decided on the basis of the Compounding Application, by the coordinate Bench of this Court vide its judgment dated 09.04.2021, which is being sought to be recalled by the Uttarakhand Subordinate Services Selection Commission, by filing a Recall Application on 06.12.2022, which is supported with a Delay Condonation Application, seeking condonation of 574 days of delay.

(v) In C482 Application No. 722 of 2021, the challenge was given by the applicants to the criminal proceedings of Criminal Case No. 427 of 2020, which too was decided by the coordinate Bench of this Court, while exercising its powers under Section 320 of CrPC on the basis of the Compounding Application vide its judgment dated 09.04.2021, which is being sought to be recalled by the Uttarakhand Subordinate Services Selection Commission, by filing a Recall Application on 06.12.2022 along with the Delay Condonation Application, seeking a condonation of 574 days of delay.

(vi) The C482 Application No. 847 of 2021 was instituted by the applicant, thereby putting a challenge to the proceedings of Criminal Case No. 290 of 2021, which was decided by the coordinate Bench of this Court, vide its judgment dated 19.01.2022, while exercising its inherent powers under Section 320 of CrPC, resulting into a composition of offence, which was complained of against the applicants. The said judgment has been sought to be recalled by the applicant Uttarakhand Subordinate Services Selection Commission by filing a Recall Application on 06.12.2022 along with a Delay Condonation Application, seeking a condonation of 291 days of delay.

(vii) In C482 Application No. 889 of 2021, the challenge as it was given by the applicant therein was to the proceedings of Criminal Case No. 290 of 2021, which too stood adjudicated by the coordinate Bench of this Court, vide its judgment dated 01.07.2021, thereby compounding the offences by invoking provisions contained under Section 320 of CrPC and the proceedings were laid to rest. The same has been sought to be recalled by way of filing a recall application dated 06.12.2022, which too has been preferred along with the Delay Condonation Application, seeking a condonation of 492 days of delay, which had chanced in seeking recall of the order dated 01.07.2021.

(viii) In C482 Application No. 89 of 2022, the challenge given by the applicant therein was to the Criminal Case No. 408 of 2021, which was decided by the coordinate Bench of this Court vide its judgment dated 19.01.2022, thereby compounding the offences under Section 320 of CrPC, which is being sought to be recalled by filing a Recall Application on 06.12.2022, along with the Delay Condonation Application, seeking a condonation of 291 days of delay, which has chanced in seeking recall.

(ix) In C482 Application No. 91 of 2022, the challenge given by the applicant therein, was to a Criminal Case No. 290 of 2021, which was decided by the coordinate Bench of this Court, vide its judgment dated 09.01.2022, thereby compounding the offences under Section 320 of CrPC, which too has been sought to be recalled by the applicant Uttarakhand Subordinate Services Selection Commission, by filing an application for recall on 06.12.2022, along with the Delay Condonation Application, seeking a condonation of 291 days of delay.

2. There are various facets, which have been argued by the learned counsel for the applicant to the Recall Application(s), and primarily, the arguments which has been extended by Mr. C.K. Sharma, the learned counsel, who represents Uttarakhand Subordinate Services Selection Commission, is from the perspectives that Uttarakhand Subordinate Services Selection Commission, would have been an aggrieved party and it ought to have been heard at the stage when the C482 Application itself was being considered on compounding application by the coordinate Bench of this Court, even at the stage of considering the Compounding Application under Section 320 of CrPC.

3. The issue would be, as to whether at all in a criminal lis, which is not a lis in persona, and it is an interse dispute between the complainant and the accused person therein on which the cognizance have been taken in the respective cases, which was subjected to challenge in the aforesaid C482 Applications, whether at all Uttarakhand Subordinate Services Selection Commission, which is not a party to the proceedings, even if at all it is a body responsible for holding a selection, could at all be a necessary party to be heard in a criminal proceedings.

4. This Court is of the view, that a criminal proceedings is for the purposes of fixation of a criminal liability against an offence allegedly leveled against the applicant in the C482 Application by the complainant of the FIR, which was subject matter of investigation, in which the Chargesheet was submitted and later on, the summoning order was issued. In that eventuality, it is absolutely a rift which is confined between the complainant and the accused person, who were subjected to the proceedings of a criminal case, as respectively detailed above, and it was a dispute between them, which was required to be settled by the Courts, exercising its inherent powers under Section 482 of

CrPC and none of the applicants accused persons were at all under law, required to make Uttarakhand Subordinate Services Selection Commission as a party to the proceedings, because the offence, which was complained of being, that of under Sections 420 and 120B of the IPC and 66D of the Information Technology Act and Section 9/10 of the U.P. Public Examinations (Prevention of Unfair Means) Act, 1998, against the accused applicants only, it would be exclusively an action against an individual and Uttarakhand Subordinate Services Selection Commission, cannot be said to be at all a necessary party which was required to be impleaded in the C482 application particularly when whatsoever the consequences of the C482 application might have been, it would have only resulted into a criminal prosecution of the applicants respectively in the C482 Applications and that would have been at the behest of the FIR which was got registered by the complainant against them.

5. Hence, this Court is of the view, that Uttarakhand Subordinate Services Selection Commission couldn't have been or shouldn't have been required to be made as a party, when they were not parties to the proceedings of the respective criminal cases before the trial Court.

6. The learned counsel for the applicant, in support of his contention, in order to substantiate his argument that Uttarakhand Subordinate Services Selection Commission, was a necessary party and they ought to have been impleaded as a party in the proceedings of under Section 482, has made reference to a judgment rendered by the Hon'ble Apex Court in the matters of Daxaben Vs. The State of Gujarat & Others in Criminal Appeal No. ....of 2022, which was arising out of the SLP (Crl.) No. 1132-1155 of 2022, and particularly, he has made reference to the observations, which had been made by the Hon'ble Apex Court in paragraphs 22 and 23 of the said judgment, which are extracted hereunder:-

"22. The High Court rightly found, in effect, that it had the inherent power to recall a judgment and/or order which was without jurisdiction or a judgment and/or order passed without hearing a person prejudicially affected by the judgment and/or order. The High Court, however, fell in error in not recalling the order dated 20th October 2020. The High Court did not address to itself, the question of whether it had jurisdiction to quash a criminal complaint under Section 306 of the IPC, which is a grave non- compoundable offence, entailing imprisonment of ten years, on the basis of a settlement between the parties.

23. The High Court erred in declining the prayer of the Appellant for recalling its order dated 20th October 2020, passed without hearing the wife of the deceased only because the original informant/complainant, a cousin brother and an employee of the deceased had been heard. Hearing a cousin-cum-employee of the deceased cannot and does not dispense with the requirement to give the wife of the deceased a hearing. The wife of the deceased would have greater interest than cousins and employees in prosecuting accused persons charged with the offence of abetting the suicide of her husband."

7. In fact, in a nutshell, if the liberty which if at all is granted to a person affected to file a recall application in a proceedings before the High Court, which has been drawn while exercising its inherent jurisdiction could be limited to be considered in the context of the issue, which was the subject matter before the Hon'ble Apex Court. That was an offence under Section 306 of IPC and in that eventuality, the necessity or a liberty granted to a person to be heard has to be read in the contextual and factual backdrop of the said case, where the offence under Section 306 of IPC was subject matter of trial and the deceased wife was required to be heard.

8. A uniform principal of a necessity of making a person as a party to the proceedings, cannot be applied in the instant case, because here it's not an individual right of the Uttarakhand Subordinate Services Selection Commission, which is, at all affected at the behest of the complaint which was registered by a private person against the present applicants, because in the proceedings drawn in a complaint registered by a private person, will not at all prejudice the rights of Uttarakhand Subordinate Services Selection Commission, if at all it has in the eyes of law particularly in a criminal case which is always a subject of trying the named accused person.

9. There is another reason, why not to accept the arguments extended by the learned counsel for the recall applicants, owing to the fact, that in the earlier phase of proceedings, a writ petition, being Writ Petition (S/S) No. 896 of 2021, Omveer Chaudhary Vs. State of Uttarakhand and others, came up for consideration before this Court, whereby the following relief was sought by the petitioner of the said writ petition, which is extracted hereunder:-

"PRAYER It is therefore most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

(a). Issue an appropriate order, Writ or directions in the nature of Certiorari commanding & directing the Respondents to quash the Impugned Order No.1817 dated 09-3-2021 (Annexed herewith as Annexure No.-8) & quash the subsequently issued Impugned Order No 285 dated 07-

7- 2021 (Annexed herewith as Annexure No.-10) issued by Respondent No.-2, in the interest of justice to the Petitioner.

(b). Issue an appropriate order, Writ or directions in the nature of Mandamus commanding and directing the Respondent No.-2 to declare the result of entire examination a fresh including the result of Petitioner and issue call letters of all such qualified candidates in order of merits to appear in Physical Tests (2nd phase of recruitment examination) to twice the numbers of candidates being recruited as per advertised Posts of Forest Guards, interest of justice to the Petitioner.

(c). Issue an appropriate order, Writ or directions in the nature of Mandamus commanding and directing the Respondents to declare the Petitioner discharged of all the allegations after quashing of the alleged allegations of copying & using unfair mean in the Forest Guard Examination the interest of justice to the Petitioner.

(d). Issue any other order or any further direction which this Hon'ble Court may deem fit and proper in the facts circumstances of the case to mold the relief and render justice to the petitioner.

(e). Award the cost of the present writ petition to the petitioner."

10. What is important to be observed at this stage itself, is that in those proceedings drawn by the petitioner before this Court on 24.07.2021, the Uttarakhand Subordinate Services Selection Commission and its Examination Controller, were very well impleaded as a parties to the proceedings as respondent Nos. 2 & 3, and they were represented by their respective counsels when the writ petition itself was taken up on its merit. In that eventuality, it cannot be said that Uttarakhand Subordinate Services Selection Commission, with the change of counsel, who had filed a recall application can take a stand that they didn't had the knowledge of passing of the order on the Compounding Application by the coordinate Bench of this Court. The change of counsel cannot be a ground to attribute knowledge to the Uttarakhand Subordinate Services Selection Commission to file an application for recall.

11. There is another reason, for not to accept the arguments of the learned counsel for the Uttarakhand Subordinate Services Selection Commission either in support of the Recall Application or in support of the Delay Condonation Application, for the reason being that when the Writ Petition (S/S) No. 896 of 2021, was considered by this Court on 26.07.2021, at the admission stage, this Court, had passed orders in the presence of the counsel for respondent Nos. 2 & 3, who were then represented by Mr. N.S. Pundir, Advocate, therein, and they were made conscious of the fact about the registration of the Criminal Case No. 141 of 2020, at P.S. Kotwali Mangalore, district Haridwar and simultaneously, they were also made conscious of the filing of C482 Application No. 889 of 2021, Navodit Salar and Another Vs. State of Uttarakhand. Not even that, they were also made conscious of the fact, that when the proceedings of the writ petition were taken up at the later stage, that the matter has been compounded by the judgment dated 01.07.2021.

12. In that eventuality, the observations, once it was made in the presence of the counsel of the present applicant, it cannot be ruled out that they were very well conscious of the proceedings of C482 Application, and if at all, they had any prejudice, which was likely to be caused against them, they ought to have filed an application in the C482 Application itself for getting themselves impleaded.

13. However, for the reasons best known to Uttarakhand Subordinate Services Selection Commission, they have chosen not to seek themselves impleaded at that stage in the pending C482 applications and it is not even that, when the Writ Petition (S/S) No. 896 of 2021, was ultimately taken up finally and decided by the judgment dated 02.03.2022, it is yet again that this Court has taken cognizance of the effect of the criminal proceedings and the pending C482 Applications and thereupon the judgment rendered by the coordinate Bench of this Court on the compounding application on the basis of which the writ petition was disposed of.

14. At the stage, when the matter was finally heard, the Uttarakhand Subordinate Services Selection Commission, was very well represented by the changed counsel Mr. Lalit Samant, Advocate. This



Court doesn't find any logic as to why even at that point of time, Uttarakhand Subordinate Services Selection Commission had not filed an appropriate application for redressal of their grievances as a consequential effect of the orders passed on the compounding application in the C482 Applications, which has been preferred before this Court.

15. In that eventuality, this Court is of the view that the Uttarakhand Subordinate Services Selection Commission, now cannot be permitted to take liberty to take a somersaulted stand of filing of a recall application along with the respective delay condonation applications, more particularly, when from the date of inception of the writ petition i.e. on 24.07.2021, they were very well conscious of the pending C482 Application, thus the reason, which has been given in the delay condonation application and with regard to the effect, which has been brought against them as a consequence of the compounding orders in the respective C482 Applications, cannot be accepted to be sustainable or to have any logic to be interfered by this Court.

16. There is another reason for not to accept the arguments of the learned counsel for the applicant Uttarakhand Subordinate Services Selection Commission as against the order passed on the Compounding Applications in Criminal Miscellaneous Case No. 721 of 2021, which was decided on 09.04.2021, which was akin in nature to all the other C482 Applications which has been referred to hereinabove, the matter was taken upto the Hon'ble Apex Court by the State of Uttarakhand, by preferring an SLP, being SLP Criminal No. 9998 of 2021, State of Uttarakhand and Another Vs. Sunil Kumar and Others.

17. The Hon'ble Apex Court, vide its judgment dated 12.01.2022 had dismissed the SLP against the respective compounding orders with the following observations, which is extracted hereunder:-

"Upon hearing the counsel the Court made the following order.

In the facts and circumstances of the cases, we are not inclined to interfere with the order impugned. The special leave petitions are, accordingly, dismissed.

Pending application(s), if any, stands disposed of."

18. The learned counsel for the applicant attempted to argue that the decision rendered by the Hon'ble Apex Court, as if it was a judgment in limine, it will make it open for the applicant to still file a recall application. The said argument is not acceptable by this Court for the following reasons:-

(a) They had the knowledge of the criminal proceedings in the Misc. Service Writ Petition itself.

(b) They were represented by their counsels and had the knowledge about its consequential effect, if at all, it had against the Uttarakhand Subordinate Services Selection Commission.

(c) It was at that stage that the Uttarakhand Subordinate Services Selection Commission, ought to have resorted to its judicial remedies.

(d) Apart from it, the argument as extended by the learned counsel for the applicant that the judgment of the Hon'ble Apex Court happens to be a judgment in limine, is not acceptable by this Court for the reason being that the expression which has given by the Hon'ble Apex Court, is to the effect that the counsels were heard; the facts and circumstances of the case were considered; and the SLP was dismissed on merits and once it's a dismissal on merits, the recall of an order would not be permissible in the eyes of law, because it will amount to sitting over the judgment which had been passed by the Hon'ble Apex Court on 12.01.2022. Hence too, the recall application, preferred by the applicant for seeking recall of the order of compounding of the criminal proceedings, since has attained finality by the Hon'ble Apex Court, the same would not be sustainable to be reopened on the recall application.

19. Hence, for the reasons aforesaid, the Delay Condonation Applications are not tenable for the reasons of the knowledge, which was attributed to the applicants and secondly, for the reasons that since the judgment has been affirmed by the Hon'ble Apex Court, it cannot be revisited by the Courts, exercising its inherent powers under 482 by seeking a recall which will amount to sitting over the judgment of Hon'ble Apex Court.

20. Hence, the Delay Condonation Applications and the Recall Applications respectively filed in the above nine C482 Applications are misconceived and they are hereby rejected.

(Sharad Kumar Sharma, J.) 20.12.2022 Mahinder/