

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Writ Petition No.1264 of 2021

Nandan Kumar Mittal Petitioner

Versus

State of Uttarakhand and othersRespondents

Mr. Piyush Garg, learned counsel for the petitioner.

Mr. V.S. Rathore, learned A.G.A. along with Mr. Pankaj Joshi,
learned B.H. for the State.

Hon'ble R.C. Khulbe, J.

Heard learned counsel for the parties.

2. This criminal writ petition has been filed under Article 226 of the Constitution of India for quashing the FIR No.0261 of 2020, u/s 434 and 427 IPC, registered at P.S. Doiwala, District Dehradun.

3. From the perusal of the FIR, (Annexure No1), it is clear that the said FIR was lodged under Sections 427 and 434 IPC; as per the First Schedule appended to the Cr.P.C., both these offences are non-cognizable; as per Chapter XII of Cr.P.C., an Officer of the Police Station has a power to lodge the information under Section 154 Cr.P.C. in case of cognizable offence; when an information is given regarding non-cognizable offence before a police officer, the police officer can reduce it in the prescribed format as per Section 155 Cr.P.C.; there is a basic difference between the two; as far as Section 154 Cr.P.C. dealing with offence in cognizable cases is concerned, the concerned officer of the Police Station is bound to investigate the matter, whereas, as per Section 155 Cr.P.C. which provides for information as to non-cognizable cases, the police officer has no suo moto power to investigate the matter, but as soon as the

information is recorded by him, he will refer the informant to the Magistrate; however, as per the directions of the Magistrate, certainly, a police officer has the power to investigate a non-cognizable offence also.

4. As far as present case is concerned, since the offences u/s 427 and 434 IPC fall within the category of non-cognizable offences, the concerned officer of the police station had no power to lodge the information as per Section 154 Cr.P.C. nor did he have any power to investigate the matter without obtaining the prior permission of the concerned Magistrate.

5. At this juncture, it is relevant to reproduce the relevant extract of a judgment rendered by the Hon'ble Apex Court in the matter of "*Keshav Lal Thakur vs. State of Bihar*", reported in (1996) 11 SCC 557, which reads as under:-

"We need not go into the question whether in the facts of the instant case the above view of the High Court is proper or not for the impugned proceeding has got to be quashed as neither the police was entitled to investigate into the offence in question nor the Chief Judicial Magistrate to take cognizance upon the report submitted on completion of such investigation. On the own showing of the police, the offence under Section 31 of the Act is non cognizable and therefore the police could not have registered a case for such an offence under Section 154 Cr. P.C. Of course, the police is entitled to investigate into a non-cognizable offence pursuant to an order of a competent Magistrate under Section 155 (2) Cr. P.C. but, admittedly, no such order was passed in the instant case. That necessarily means, that neither the police could investigate into the offence in question nor submit a report on which the question of taking cognizance could have arisen. While on this point, it may be mentioned that in view of the Explanation to Section 2 (d) Cr. P.C., which defines 'complaint', the police is entitled to submit, after investigation, a report relating to a non-cognizable offence in which case such a report is to be treated as a 'complaint' of the police officer concerned, but

that explanation will not be available to the prosecution here as that relates to a case where the police initiates investigation into a cognizable offence - unlike the present one - but ultimately finds that only a non-cognizable offence has been made out."

6. Accordingly, the criminal writ petition is allowed. As a result, the FIR No.0261 of 2020, lodged against the present petitioner, u/s 434 and 427 IPC, registered at P.S. Doiwala, District Dehradun, is hereby quashed.
7. Pending applications, if any, stand disposed of.

(R.C. Khulbe, J.)
13.08.2021