

**IN THE HIGH COURT OF UTTARAKHAND AT**  
**NAINITAL**

**Criminal Miscellaneous Application No. 443 of 2021**  
**(Under Section 482 CrPC)**

1. Mrs. Shaheena (Female),  
aged about 51 years, W/o Sarfaraz Khan

2. Km. Isha @ Samia (Female),  
aged about 22 years, D/o Sarfaraz Khan

Both R/o 103 Pathanpura, Near New Masjid,  
Roorkee, District Haridwar.

..... Applicants

Versus

1. State of Uttarakhand  
Through Secretary in the Department of  
Home,  
Dehradun.

2. S.H.O., PS Roorkee, District Haridwar.

3. Nafasat Khan  
S/o Sh. Abdul Hameed,  
R/o Qasba Shahpur, PS Shahpur,  
District Muzaffar Nagar ..... Respondents

Mr. T.A. Khan, Senior Advocate, for the accused applicants.

Mr. Atul Kumar Sah, AGA, for the State.

Mr. Kurban Ali, Advocate, for the complainant/private respondent no. 3.

Judgment reserved on : 7.7.2021

Judgment delivered on: 4.8.2021

**Hon'ble N.S. Dhanik, J.**

This Criminal Miscellaneous Application, under Section 482 CrPC, is preferred to quash the chargesheet and cognizance order dated 20.10.2020, passed by the Additional Chief Judicial Magistrate, Roorkee, District Haridwar in Criminal Case No. 903/2020, taking cognizance against the applicants for the offences under Sections 302, 304B IPC. Applicants have also prayed that the matter be re-investigated by a Special Investigation Team.

Facts, in brief, are that the respondent no. 3 lodged an FIR on 4.7.2020 stating that the marriage of Mr. Kashif (brother of the applicant no. 2) had taken place with Smt. Majida (niece of the complainant) on 8.2.2015. One son, namely, Master Adam was born out of the said wedlock. After the marriage, husband, mother-in-law, sister-in-law and brother-in-law of Smt. Majida used to harass her for the dowry and they were instigated by the maternal uncles of husband of Smt. Majida to kill her. On 3.7.2020, the deceased (Smt. Majida) accompanied with her husband came to the house of complainant and told him about the

demand of dowry by the accused persons. Then the complainant and his brother gave rupees fifty thousand to Kasif and assured him that they would give him some more money to buy a bullet. Thereafter deceased and her husband returned. At about 11.30 AM on 4.7.2020, a phone call came from the matrimonial house of the deceased on the phone of complainant's brother and it was informed that Majida has died. It was alleged in the FIR that the deceased was killed for dowry.

Pursuant to the FIR, investigation was made and police submitted the chargesheet against the accused persons including the present applicants and thereafter the Court below has summoned the applicants to face the trial for the aforementioned offences.

Learned Senior Counsel for the accused applicants contended that in fact it was a case of suicide and the police gave it the colour of murder/dowry death. Learned Senior Counsel submitted that the son of the deceased (about three and half years' old child) was present at the spot at the time of incident, but the police did not record his statement. Learned Senior Counsel

further submitted that the door of the room, in which the deceased committed suicide by hanging herself with the fan, was bolted from inside and when the alarm was raised by the child (son of the deceased) from inside the room, the applicants saw the scene from the window. Learned Senior Counsel argued that one Mr. Haseeb, a common relative of both sides who reached at the place of occurrence immediately after the incident, is a key witness but his name does not figure in the list of witnesses. Learned Senior Counsel submitted that the deceased had illicit relations with one unknown person, to whom she made more than 8000 calls in short span of time and talked to him in the night of 3.7.2020 and even in the morning of 4.7.2020 and the same is apparent from the call record details of the mobile phone of the deceased and when the said person refused to marry her, she committed suicide, but this aspect has not been investigated by the police. Learned Senior Counsel further argued that it has also come to light during investigation that the deceased was not sexually satisfied with her husband. Learned Senior Counsel for the applicants placed reliance on the judgment of the Hon'ble Apex Court rendered in *State of Haryana v. Bhajan Lal*, **1992 AIR 604**, and argued

that if there are latches in the investigation, interference under Section 482 CrPC would be justified.

Arguing on the medical evidence, learned Senior Counsel for the accused applicants contended that in the post-mortem report, there is no whisper regarding strangulation or homicidal death of the deceased and the said report reveals that there was an injury in 'V' shape on the neck of the deceased and the same is sufficient to draw the inference that it was a case of suicide and the injuries mentioned in the post-mortem report negate the theory of strangulation or homicidal death. Learned Senior Counsel contended that manipulation has been made in the inquest report and the same is in the handwriting of two persons.

Learned Counsel for the complainant submitted that all the ingredients of Section 304B IPC are fulfilled in the present case. As regards the recording the statement of the child witness, learned Counsel for the complainant submitted that the same was due to the fact that the accused persons along with the said child were absconding and their house was locked and they were not

cooperating in the investigation and thereafter proceedings under Section 82 and 83 CrPC were initiated. Learned Counsel further submitted that subsequently statement of the child was recorded by the Child Welfare Society in which the child has specifically stated about the murder of his mother. Learned Counsel further argued that from the post-mortem report of the deceased reveals that there were two marks on the neck of the deceased, one in 'V' shape and another one in round shape and same is sufficient to draw the inference that the deceased was murdered by pressing her neck and thereafter she was hanged. Learned Counsel for the complainant further argued that as per the statements of the doctors, who conducted the post-mortem examination, there were two marks on the neck of the deceased and as per their opinion, it was not the case of hanging and all the three doctors have given identical statements. Learned Counsel further argued that as regards the illicit relationship of the deceased with someone else, the applicants have admitted that the husband had full knowledge of that relationship and thus the husband had the motive to kill his wife with the help of other family members.

Learned State Counsel argued that the applicants have taken all the factual pleas in the present C482 application and the same cannot be looked in the jurisdiction under Section 482 CrPC.

Having heard learned Counsel for the parties and considering overall facts and circumstances of the case, as discussed hereinabove, I am of the opinion that disputed questions of fact are involved in the present case and the allegations made in the complaint, if taken at their face value and accepted in their entirety, do *prima facie* make out a case against the accused applicants.

It is settled law that powers under Section 482 CrPC require great caution in its exercise. A Constitution Bench of the Hon'ble Apex Court has elaborately discussed such scope in the case of *Inder Mohan Goswami & Another v. State of Uttaranchal & others*, **(2008) 1 SCC (Cri) 259**, and has held that inherent power under Section 482 CrPC can be exercised: (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. If any abuse of the process leading

to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers. However, the inherent power should not be exercised to stifle a legitimate prosecution.

In view of what has been set forth above, I do not find any force in this petition. Consequently, the present C482 petition is dismissed. Prayer of re-investigation is also rejected. Interim order, if any, stands vacated. Inform the Court concerned accordingly.

It is made clear that any observation made hereinabove is only for the purpose of deciding the present C482 application and the same shall not prejudice the trial court in any manner.

**(N.S. Dhanik, J.)**

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