[RESERVED]

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (Criminal) No. 1182 of 2020

Umesh Kumar Sharma ..... Petitioner

Versus

State of Uttarakhand and another ….....Respondents

With

Writ Petition (Criminal) No. 1187 of 2020

Umesh Kumar Sharma ..... Petitioner

Versus

State of Uttarakhand and another ….....Respondents

With

Writ Petition (Criminal) No. 1285 of 2020

Shiv Prasad Semwal ..... Petitioner

Versus

State of Uttarakhand and others ….....Respondents

Present: Mr. Kapil Sibal, Senior Advocate, Mr. Shyam Diwan, Senior Advocate assisted by Mr. Arunav Chaudhary, Mr. Ankur Chawla and Mr. Aditya Singh, Advocates for the Petitioners.

Mr. P.S. Pattwalia Senior Advocate assisted by Ms Ruchira Gupta, Deputy Advocate General and Mr. J.S. Virk, Deputy Advocate General for the State.

Mr. Ramji Srivastava and Mr. Navneet Kaushik, Advocates for the Respondent Harender Singh Rawat

JUDGMENT

Hon'ble Ravindra Maithani, J.

A common question of law has been raised in these writ petitions, hence, they are being decided by this common judgment.

2. Petitioners seek quashing of the communication dated 07.07.2020, the inquiry report dated 30.07.2020 and the FIR No. 265 of 2020, under Sections 420, 467, 468, 469, 471, 120B IPC, Police Station Nehru Colony, District Dehradun.

3. In this judgment, parties and contents shall be referred to with their reference to the Writ Petition (Criminal) [WPCRL] No. 1187 of 2020.

FACTS

4. On 24.06.2020, the petitioner uploaded a video on asocial media page ("the social media publication")and showed documents on a computer screen with certain bank accounts allegedly belonging to the respondent no.2 Dr Harender Singh Rawat (hereinafter referred to as "the informant") and his wife Smt. Savita Rawat. The petitioner claimed that after demonitisation in the year 2016, money was deposited in the accounts of the informant and his wife, which was meant as a bribe for Trivendra Singh Rawat, Chief Minister of Uttarakhand (for short "TSRCM"). In the video, the petitioner also claimed that Smt. Savita Rawat is the real sister of the wife of TSRCM andTSRCM realized bribe money through deposits made in the bank accounts of the informant and his wife.

5. On 09.07.2020, the informant gave an application dated 07.07.2020 ("the communication dated 07.07.2020") to the police with a request for an inquiry into the allegations levelled against him by the petitioner in the social media publication. In the communication dated 09.07.2020, the informant wrote that he is a retired Professor and due to health reasons, he

resigned. His wife Dr Savita Rawat is an Associate Professor. The informant referred to the allegations made in the social media publication, and submitted that :-

5.1. It is totally wrong that he is a relative of TSRCM.

5.2. It is totally wrong that his wife is sister of the wife of TSRCM.

5.3. It is totally wrong that during demonitisation any money was deposited from Jharkhand in his or his family member's account.

6. The communication dated 07.07.2020 of the informant was supported by the certificates of the bank and according to the informant the petitioner was misleading the public by making these claims and injuring their family reputation.

7. The informant requested that the false allegations levelled by the petitioner in the social media publication may be inquired into.

8. On this communication dated 07.07.2020, an inquiry was conducted by MsPallavi Tyagi, Circle Officer, Nehru Nagar,District Dehradun (for short "the CO") and after inquiry, it was concluded that :-

8.1. During demonetisation money was not deposited from Jharkhand in the accounts of the informant or his family members

8.2. The informant is not a relative of TSRCM and the wife of the informant is not the sister of the wife of TSRCM.

8.3. That the documents on the basis of which it is claimed that the money was deposited in the accounts of the informant and his family members are definitely forged.

9. This report was prepared by the CO on 30.07.2020. The informant sought information about the action taken on his communication dated 07.07.2020 and on 31.07.2020, a copy of the report dated 30.07.2020 was given to the informant under the Right to Information Act, 2005 (for short

"the RTI Act"). Based on it, on the same day, FIR No. 265 of 2020 under Sections 420, 467, 468, 469, 471 & 120B IPC, Police Station Nehru Colony, District Dehradun was lodged by the informant ("the instant FIR"). It is(*translation*) as hereunder:-

> "To,
>
> Station In-charge,
>
> P.S. Nehru Colony, Dehradun
>
> Sir,
>
> Humble submission is that I, Dr Harinder Singh Rawat, I am a retired Professor, and presently I am Manager of College of Education, Miyanwala, Dehradun. I am President of Dairy Firms Associations. Last year (*sic month*) as I underwent into a bypass surgery therefore I resigned from the post of President. My wife Dr Savita Rawat is Associate Professor in B.Ed. Department of DAV (PG) College Dehradun. Last year my known Shri Jyoti Vijay Rawat has informed me that a man named Umesh Kumar Sharma who generally known as a blackmailer and in the past he had got imprisonment. He has uploaded his one video in Facebook**, in which he leveled allegations against me and my wife that during the demonetization one man named Mr Amratesh Singh Chauhan has deposited in different bank accounts of my, my wife and Progressive Dairy Farm Association for paying to Shri Mr. Trivendra Singh Rawat, which was taken by Shri Mr. Trivendra Singh Rawat as bribe for appointing Mr. Amratesh Chauhan as President of Cow Sewa Commission. He strongly tried to project my wife Dr Savita Rawat as real elder sister of the wife of Shri Mr. Trivendra Singh Rawat, who is present Chief Minister. Sir, I want to make it clear that all the allegations leveled in the said telecasted video are entirely false, baseless and fraudulent.** Either me or my wife are not having any relationship with Shri Trivendra Singh Rawat. In the said telecasted video, said Umesh Kumar Sharma is showing a fabricated documents relating to cash money deposited in bank accounts. He is claiming that vide those documents said Amratesh Chauhan resident of Jharkand has deposited cash in bank accounts of me and my wife. Umesh Kumar Sharma and Amratesh Chauhan in collusion with each other under a preplanned conspiracy through their associates have illegally obtained information related to me and my wife's bank accounts and have made our personal information public because of which any fraud can be committed with us. They have hatched a conspiracy about cash money deposited and concerned documents and showed fabricated documents on the social media to the general public with a motive to fulfill their purposes and motives. Umesh Kumar Sharma claimed the

fabricated documents as original and posed faith upon public that bribe money is credited in my and my wife's accounts because of which, me and my wife suffered mental shock and public is talking and different kinds of things about us. My bypass surgery was conducted on 24.08.2019 because of which it also put adverse effect on my health and it deteriorated my health. Because of decrease in my health, it created danger to my life so I had to again go to doctor for taking treatment. On 07.07.2020, I gave an application to Director General of Police, Garhwal Region Office, Senior Superintendent of Police, Dehradun for conducting inquiry of the allegations leveled against me by the said Umesh Kumar Sharma. Upon my application, one Gazetted Officer conducted inquiry and during the inquiry, he obtained bank details of all my bank accounts and found that in any of my bank accounts, no money was deposited from Jharkhand by any person named Amratesh Chauhan. But, when the Inquiry Officer through e-mail asked questions from Umesh Kumar Sharma about the receipt of money deposited and bank related documents, then he replied that all documents are available with him, which proves that all fraudulent documents related to money deposited in bank accounts are lying in possession of Umesh Kumar Sharma. In order to make sensational to our video, Umesh Kumar Sharma has addressed in his video that after learning about this bribe scam, whether your understanding and thinking power is collapsed, who are these Harinder Singh Rawat and Savita Rawat. Savita Rawat is elder sister of the Hon'ble Chief Minister's wife. Apart from this, his other associates, who all are involved with him in his business of blackmailing and are running news portals and newspapers, which includes Prahad TV, Crime Story and Parwat Jan. Because of all this, me and my family are facing mental torture and ferocity. Therefore, it is prayed to your good self that a report of the applicant may kindly be registered against above culprit persons and strict legal action be taken against them and also provide protection to me, because these persons are of criminal nature.

Applicant

(Dr Harinder Singh Rawat)

(Annexure 2 to the writ petition)

(emphasis supplied)

BACKGROUND

10. The instant litigation is not a single case against the petitioner. There are series of cases against him and according to him, the present petition emanates out of the allegations made by one AmrateshSingh Chauhan against TSRCM that he had paid Rs.25,00,000/- to TSRCM for his

appointment as the Chairman of Gau Seva Ayog, Jharkhand as TSRCM was the Party State In-charge of Jharkhand at the relevant time. According to the petition, AmrateshSingh Chauhan had claimed as hereunder:-

"8. That, Respondent No.3 has claimed as under:-

1. Mr. Amratesh Singh Chauhan claims that he was close with Mr. T.S. Rawat (Present Chief Minister of Uttarakhand) who was the state incharge of BJP of Jharkhand.
2. It is claimed by Mr Chauhan that he had a deal with Mr T.S. Rawat (CM) and Amratesh Chauhan wanted him to use his influence with BJP State Government and to appoint Amratesh as Chairman Gau Sewa Aayog.
3. It is claimed that a deal was fixed between T S Rawat and A.S. Chauhan for the said purpose. As the amount was hefty and some advance has to be given to T S Rawat for the same.
4. Subsequently, A.S. Chauhan wrote a letter dated 07.11.2016 to the CM Jharkhand Sh. Raghuvar Das on dated 07.11.2016, a day before demonetization on 08.11.2016. Copy of a letter dated 07.11.2016 sent by A S Chauhan to the CM Jharkhand Sh. Raghuvar Das on dated 07.11.2016 a day before demonetization on 08.11.2016 is annexed herewith and marked as "**ANNEXURE-3**".
5. Thereafter assembly elections were announced within the State of Uttarakhand and code of conduct was imposed within the state.
6. CM T S Rawat, wanted some amount of the committed money from A S Chauhan as he was contesting from Doiwala Constituency.
7. A S Chauhan was ready to bribe for the post of Gau Sewa Aayog Adhyaksh (Chairman), Jharkhand as in Point A about it was apparent that T.S. Rawat was then the state incharge of BJP Jharkhand.
8. This bribe money was deposited in cash into accounts of close relatives and close acquaintances of Mr. T.S. Rawat, NAMELY.

Sl. No	**Bank Name**	**Name**	**A/c No.**	**IFSC Code**
1.	PNB Vidhan Sabha Dehradun	Harender Singh Rawat & Savita Rawat **(NOTE:- They are Brother In Law and Sister in Law of the Chief Minister. Ms. Savita Rawat is the real sister of Ms. Sunita Rawat, who is the wife of the Chief Minister)**	4422000101007449	PUNB0442200

2.	PNB Vidhan Sabha Dehradun	Rajender Singh Rawat **(He is a close friend of the Chief Minister)**	442200010101143	PUNB0442200
3.	SBI Defence Colony, Dehradun	Harender Singh Rawat & Savita Rawat **(NOTE:- They are Brother in Law and Sister in Law of the Chief Minister. Ms. Savita Rawat is the real sister of Ms Sunita Rawat, who is the wife of the Chief Minister)**	10014685495	SBIN000822
4.	Canara Bank Miyanwala Dehradun	Harendra Singh Rawat & Savita Rawat **(NOTE:- They are Brother in Law and Sister in Law of the Chief Minister. Ms. Savita Rawat is the real sister of Ms Sunita Rawat, who is the wife of the Chief Minister)**	4463101000800	CNRB0004463
5.	PNB Vidhan Sabha Dehradun	Harender Singh Rawat & Sons (HUF) **(NOTE:- They are Brother in Law and Sister in Law of the Chief Minister. Ms. Savita Rawat is the real sister of Ms. Sunita Rawat, who is the wife of the Chief Minister)**	4422000101066080	PUNBV0442200
6.	Allahabad Bank Nehru Colony Dehradun	Harender Singh Rawat **(Note:- They are Brother in Law and Sister in Law of the Chief Minister. Ms. Savita Rawat is the real sister of Ms. Sunita Rawat, who is the wife of the Chief Minister)**	21071300696	ALLA0211873

7	SBI Kundeswan	Harender Singh Rawat **(Note:- They are Brother in Law and Sister in Law of the Chief Minister. Ms. Savita Rawat is the real sister of Ms. Sunita Rawat, who is the wife of the Chief Minister)**	33115909228	SBIN0007398
8	BOB Hardwar Dehradun	Progressive Dairy Farmers Welfare Association **(Note:- Mr. Harender Singh Rawat is in control of this entity)**	41460100000596	BARBOHARDEH
9.	BOB Hardwar Dehradun	Naveen Singh Bisht **(Note:- He is a friend of Mr. T.S. Rawat)**	41460100000056	BARBOHARDEH
10	SBI Jogiwala Dehradun	Rajendra Kaushal **(NOTE:- PERSON KNOWN TO BE CLOSE TO CM)**	32958098114	SBIN0016158
11	SBI Uttaranchal Gramin Bank Mohakampur	Rajni **(NOTE:- PERSON KNOWN TO BE CLOSE TO CM)**	76006607094	SBINORRUTGB
12	SBI Uttaranchal Gramin Bank Mohakampur	Ramu Dhiman **(NOTE:- PERSON KNOWN TO BE CLOSE TO CM)**	4113022734	SBINORRUTGB
13	IDBI Bank Nehru Colony	Vicky Sharma **(NOTE:- PERSON KNOWN TO BE CLOSE TO CM)**	1032102000004657	IBKL0001032
14	SBI-IIP	Chandra Shoba W/o Suresh Chand **(NOTE:- PERSON KNOWN TO BE CLOSE TO CM)**	10075140072	SBIN0002359

SOCIETY A/C – UPTO FIVE LACS – ONE TIME

Sl. No	**Bank Name**	**Name**	**A/c No.**	**IFSC Code**

1	Canara Bank Miyanwala Dehradun (Saving)	USHA Society for Human Affairs **(Note:- Mr. Harendar Singh Rawat is in control of this entity)**	4463101000795	CNRB0004463
2.	BOB Hardwar Dehradun (Saving)	Nalanda College of Education **(Note:- Mr. Harendar Singh Rawat is in control of this entity)**	41460100000168	BARBOHARDEH
3.	BOB Hardwar Dehradun (P.D.F.A.) (Current)	Progressive Dairy Farmers Welfare Association **(Note:- Mr. Harendar Singh Rawat is in control of this entity)**	41460200000094	BARBOHARDEH

Bank Deposit receipts

Note- All the above Bank Receipts were given by Shri Rajesh Sharma, a Journalist from Dehradun and the same were sent by A.S. Chauhan from his mobile no. 9431361039 to Rajesh Sharma on Whatsapp No. 9897598151.

Details of Messages:-

A) February 2018 – A.S. Chauhan messaged Rajesh Sharma regarding a favour that he has given the CM TS Rawat an amount for the aforesaid purpose and the CM is not returning the same. So, he wants Rajesh Sharma to publish the same in Media. (Note: There is only one message exchanged which says, that he wants to talk to Rajesh, post which he called Rajesh and conversed with him).

B) 07.02.2018 –Thereafter, AS Chauhan provided Whatsapp conversation with the CM T.S. Rawat to Rajesh Sharma.

C) 07.02.2018 – On Whatsapp Rajesh asked Chauhan, the purpose for paying money to the CM.

D) 07.02.2018 – A.S. Chauhan replied, that when CM TS Rawat was the state incharge of BJP of Jharkhand, I approached him for appointing myself as Chairman Go Sewa, Jharkhand and he asked me for money for Election Expenses. So A.S. Chauhan deposited the money into the accounts of close alliances and relatives of the CM.

E) Around the month of February – An audio recording was recorded by Rajesh Sharma when A. S. Chauhan called him on his mobile number 09897598151 and told him the complete details of instances that occurred in the past between A.S. Chauhan and T.S. Rawat. Copy of the Transcript of the Audio conversation alongwith the DVD of the audio conversation (AROUND FEBRUARY) is annexed herewith and marked as "**ANNEXURE-4 (COLLY)**".

F) 13.01.2019 – Amratesh Chauhan posted a picture on Facebook with the lawyer of the Hon'ble CM at his residence, thereafter, on 22.01.2019,

Amratesh Singh Chauhan was given 39 acres of land at the border of Uttarakhand and Himachal which is corroborated from his Facebook post taken from his account on 22.01.2019 at 07.17 AM substantiates the fact that Amratesh Singh Chauhan from Ranchi was given 39 acres farm at the border of Uttaranchal Uttarakhand after assistance from an unknown person.

G) 27.12**.** 2016 (01:33 P.M.) – The CM TS Rawat exchanged watsapp messages with Amratesh Singh Chauhan, in a text message dated 27.12.2016, Amratesh Chauhan stated that he had deposited an amount of Rs.50,000/- in account of Rajni, 50,000/- in account of Ramu, Rs. 50,000/- in Rajesh and further informed that an amount of Rs. 3,00,000/- shall be deposited in the account of Rajendra Kaushal. The copy of the watsapp messages dated 23.12.2016 AND 27.12.2016 between Amratesh Chauhan and Hon'ble CM is annexed and marked as "**ANNEXURE-5 (COLLY)**". That the bribe amount paid by Amratesh Chauhan was paid into the account of all persons associated with CM T.S. Rawat.

H) 29.12.2016 (03:36 P.M.) – That the bribe amount paid by Amratesh was paid into the account of alliances of the CM TS Rawat, it was not only paid but also the CM T.S. Rawat has taken follow-ups regarding the same from A.S. Chauhan through WhatsApp messages wherein he confirmed the receipt of payment in the account of Rajni and further confirmed that payment in the accounts of Ramu and Rajender are still waiting. The copy of the Watsapp messages sent by Hon' ble CM to Amratesh Chauhan dated 29.12.2016 is annexed herewith and marked as "**ANNEXURE-6".**

I) 30.12.2016 (03:34 p.m.) – Amratesh Chauhan sent Rs. 3,00,000/- cash deposit slip in account of Rajender to CM TS Rawat. The copy of the Whatsapp messages sent by Amratesh Chauhan to Hon'ble CM dated 30.12.2016 is annexed herewith and marked as **"ANNEXURE-7".**

J) 15.01.2017 (11.04 A.M.) – A.S. Chauhan in his message had apprised the CM T.S. Rawat that an amount of more than 2 lakhs cannot be deposited in single account post demonetization and therefore his CA has suggested to deposit 2 lakhs in one account so 15 lakhs will be deposited tomorrow and further requested to provide five other bank account numbers. The copy of the Watsapp messages sent by Amratesh Chauhan to Hon'ble CM T.S. Rawat dated 15.01.2017 is annexed herewith and marked as **"ANNEXURE-8"**.

K) 16.01.2017 (11:17 P.M.) – CM TS Rawat sent a sheet containing details of 12 bank account numbers of his close alliances, relatives and friends to Amratesh Singh Chauhan so that an amount of Rs. 2 Lacs can be deposited by Amratesh in different bank account. The copy of the Watsapp messages sent by CM T.S. Rawat to Amratesh Chauhan datd 16.01.2017 is annexed herewith and marked as **"ANNEXURE-9".**

L) 01.02.2017 (07:11 AM) – Amratesh Chauhan asked CM T.S. Rawat to sent him current account numbers to deposit cash so that he can complete the payment part. The copy of the Watsapp messages sent by Amratesh Chauhan to Hon'ble CM dated 01.02.2017 is annexed herewith and marked as **"ANNEXURE-10"**

M) 01.02.2017 (10:54 PM) CM TS Rawat provided him current account details of the 3 accounts namely Usha Society, Nalanda College, and Progressive

Dairy all three accounts belongs to CM Close relatives Harender Rawat, who was advisor to T.S. Rawat for 5 years when T.S. Rawat was agricultural minister in U.K. Government.

N) 06.02.2017(08:41 P.M.) – A.S. Chauhan messaged CM T.S. Rawat regarding deposit of 5 lakh each in aforesaid current accounts and asked to tell CM Jharkhand to issue the notification of Gau Sewa Aayog post which he will deposit other 5 lakhs in his account. The copy of the Watsapp messages sent by Amratesh Chauhan to Hon'ble CM dated 06.02.2017 is annexed herewith and marked as **"ANNEXURE-11".**

O) 12.02.2017 – A.S. Chauhan informed T.S. Rawat that he cannot make any further payments as his family is very much disturbed and further contended that he shall make further payments once he is appointed as CHAIRMAN, Gau Sewa Aayog. A.S. Chauhan also put a condition of returning the money in his account Akki's Agro Account No. CA 792993573, Indian Bank, Kadru Road, Ranchi. The copy of the Watsapp messages sent by Amratesh Chauhan to Hon'ble CM dated 12.02.2017 is annexed herewith and marked as **"ANNEXURE-12".**

9. That, the Petitioner submits that one of the account provided by Respondent no.2 belongs to the Complainant and it has been alleged in the complaint that no monies were deposited in his accounts and thus the Petitioner has committed cheating, forgery and various other offences under the Indian Penal Code, while putting the information provided by the Respondent No.2 in public domain in Social Media platforms, which were put on "facebook" in September, 2019. That, it is submitted that the Petitioner has only put on social media platforms provided by Respondent No.2 and not even a single document has either been created for it to be forged.

10. That, it is submitted that, each and every document and the bank accounts which form basis of the present complaint are subject matter of scrutiny before this Hon'ble Court in Writ Petition (Criminal) No. 2113 of 2018 titled "Umesh Sharma verses State of Uttarakhand and others" and on the basis of these very documents, an enquiry by CBI has been sought by the Petitioner. That it is thus submitted that the impugned complaint seeks to initiate enquiry on allegations which are already a subject matter of enquiry before this Hon'ble Court and hence is a clear interference with the judicial process.

11. It is clear from the Questionnaire being sent to the Petitioner that it has been sent to obtain answers from the Petitioner so that the complaint can be improved upon and sections be added to the subsequent FIR. The said questionnaire clearly establish that the investigation is being carried out to implicate the Petitioner under the offence of forgery for documents which are in the public domain (social media) of the Petitioner.

12 That the Petitioner is a journalist by profession and CEO of Bangla Bharat News Channel and while discharging his professional obligation has conducted sting operation against the close relatives of Chief Minister of Uttarakhand with regard to illegal gratification being taken by them. It is post which the Petitioner is being persecuted for exposing corruption of the high public functionaries of the incumbent Government of Uttarakhand. That, time Petitioner was the Chief Editor of "Samachar Plus" News Channel."

11. With regard to the sting operations conducted by the news channel correspondent of the petitioner, according to the petitioner, regarding a special story on corruption chain in Uttarakhand Government where top officials, their relatives, friends and their associates were involved in corrupt practices, Pt Ayus Gaur (for short "the first informant") sought story approval from the petitioner as well as cash request on 17.04.2018 (Para 17(o) of the Petition). The first informant through his e-mail conveyed that he would be meeting a close associate of TSRCM with whom the first informant would speak regarding the contracts of construction. In order to make special story, the first informant proceeded as hereunder (details in the rejoinder affidavit):-

11.1. On 18.04.2018, the first informant met a Sanjay Gupta as a representative of the Hotel group with intent to buy land for building up a hotel/resort in Uttarakhand. Sanjay Gupta took the first informant to his land at Ranipokhri and their conversation was recorded by the first informant. (Annexure RA-9)

11.2. In this conversation, Sanjay Gupta revealed that nephews of TSRCM make money by influencing small officers. (Annexure RA-10 & RA-11)

11.3. Sanjay Gupta, according to the petitioner, was a conduit of TSRCM. On the same day, the first informant met the Officer on Special Duty to Chief Minister at a dinner in a hotel. Their conversation was also recorded by the first informant. (Annexure RA-12)

11.4. On 19.04.2018, the first informant gave a cash of Rs.5,00,000/- to Sanjay Gupta on account of meeting with the Chief Minister of Uttarakhand and it was settled that Rs.10,00,000/- will be given later on when the meeting is conducted. This conversation was also recorded by the first informant. (Annexure RA-13)

11.5. There are details of other meetings also, but according to the petitioners, on 05.05.2018, a meeting was conducted between the first informant and the Chief Minister of

Uttarakhand of which Sanjay Gupta was a part. On the same day evening, Rs.2,00,000/- were given to Sanjay Gupta by the first informant. This conversation was also recorded by the first informant. (Annexure RA-15)

11.6. In the evening of 05.05.2018, the first informant paid Rs.2,00,000/- more to Sanjay Gupta and the conversation was further recorded. (Annexure RA-21)

11.7. According to the petitioners, out of Rs.5,00,000/- Rs, 2,00,000/- were given to Sanjay Gupta in order to note his reaction in retaliation, as the given amount was less than the committed amount. (Annexure RA-22)

11.8. Sanjay Gupta, thereafter, gave account number of his wife in which on 08.05.2018, Rs.2,40,000/- were deposited by the first informant. (Annexure RA-22)

11.9. On 02.06.2018, the first informant met the brother of the Chief Minister of Uttarakhand namely Virendra Singh Rawat and they talked about obliging Education Minister for implementing Robotic Science in the Schools of Uttarakhand and the issue relating to the mining in the State of Uttarakhand also came up for discussion. The meeting was held the same day, in the house of TSRCM, at S-3/C-130, Defence Colony, Dehradun. The entire conversation was further recorded by the first informant. (Annexure RA-23)

11.10. On 05.05.2018, after the meeting with the Chief Minister,the first informant took his spy-cam from the Security Officer and whatever conversation took place was recorded by the first informant. The photographs with the Chief Minister have also been enclosed.(Annexures RA-17 & RA-18)

11.11. Other small details with regard to special story, which was done by the first informant are also detailed in the rejoinder affidavit filed by the petitioner.

12. After all this had happened, on 10.08.2018, the first informant lodged a report against the petitioner and four others, which is FIR No. 100 of 2018, under Sections 386, 388, 120B IPC, Police Station Rajpur, District Dehradun ("the FIR No. 100 of 2018") This FIR No. 100 of 2018 is as hereunder (*translation*);

To,

Senior Superintendent of Police,

Dehradun, Uttarakhand.

Sir,

I, Pandit Ayush Gaur, working on the post of Editor, Investigation of the New Channel Samachar Plus, in Uttarakhand, Editor-In-Chief/CEO of this Channel is Shri Umesh Kumar Sharma, R/o Tower No.19, Flat No. 19241, Indrapuram, P.S. Indrapuram, Gaziabad, PIN-20104. Office Address: H-74, Sector 63, Noida, P.S. Sector 58 Noida, Gautam Buddh Nagar. There I am working for last two and half years. Apart from me, Umesh Sharma's niece, Praveen Sahni and Saurbh Sahni and Rahul Bhatia also do sting operations for the channel. In sting operations these people trap ministers and officers through spy camera. But, Umesh Sharma don't telecast news over his channel and under a preplanned conspiracy he earns money by blackmailing them. With this intention, he has sent Madhu and Rahul Bhatia here in Dehradun, Uttarakhand. During this period Umesh continuous pressurizing me over phone for trapping ministers, bureaucrats and officers. Serial wise details of which are as hereunder:-

(1) On 12.01.2018, CEO has told me that he has prepared some fake and dummy parties and in collision with Additional Chief Secretary has ordered reality check on the pretext of tender and said that he has confirmed information that some senior officers and some ministers in Uttarakhand are involved in corruption.

(2) On 19.01.2018, Shri Umesh Kumar has told me on phone that you reach Uttarakhand Guest House situated in Delhi and meet Mrityunjay Mishra and further said Mrityunjay Mishra will introduce you with Additional Chief Secretary, Shri Om Prakash Ji and said that you reach there with some money in a sequential manner, prepare the video recording with spy camera. I on 08.02.2018 in compliance of Shri Umesh Kumar Sharma's direction reached at Uttarakhand Sadan(Chanakyapuri Delhi) and met Mrityunjay Mishra.

(3) On 10.02.2018, met Mrityunjay Mishra in Uttarakhand Sadan. On 16.02.2018, Mrityunjay Mishra fixed 4:00 P.M. evening time for meeting with CM, State of Uttarakhand. Umesh Kumar has also

directed me to handover some money to Om Prakash Ji and record it in spy cam and thereafter, you have to meet CM and try that CM himself speak from his mouth that he is with us.

(4) From 16.02.2018 to 18.03.2019, it was not clear that whether any officer is demanding any money or doing the wrong thing. While Umesh Kumar under his planning was continuously pressuring me, because of which, I was disturbed but could not reach to CM and thus his planning failed. Umesh called me to Dehradun through Whats App and said that again operation has to be done. This incident is of 30.03.2018, in sequence to it, on 16.04.2018 and 27.04.2018, I came to Dehradun. Information of this incident was given to Rahul Bhatia. Rahul Bhatia introduced me with such persons, who are having relations with CM. On 18.04.2018, after completing the recording operation, Rahul Bhatia called to Umesh Sharma, then Umesh Sharma directed to reach at the place of marriage ceremony of Harak Singh's family. Then I alongwith one associate and Rahul Bhatia reached at the place of marriage celebration of Harak Singh's family and there handed over the chip (memory card) to Umesh Kumar.

(5) On 28.04.2018 and 29.04.2018, I was in Dehradun. On 29.04.2018, Umesh Kumar at his home at Dehradun in Tennis Court said to Rahul Bhatia and his niece Praveen and two other persons to whom I identify by face that still the work has not been completed. Our planning is failed, if only once, we can trap Chief Secretary, then it will be beneficial for us and then none of our work will be stopped and whatever we want that will be fulfilled because there will be political disability in the State. By hearing this, I was shocked and surprised and I was very much disturbed because Umesh Kumar and his associates were using me and by using me, they were planning to cause disturbance and instability in the State.

(6) On 05.05.2018, I was at CM's house alongwith Rahul Bhatia and three spy cameras and I was told to do sting operation of CM. Since I was aware of the conspiracy, so I was very much disturbed and unwell from inside and my hands and legs were shivering. I **was thinking that I may not go behind bars in their conspiracy so I left spy cameras outside and did not do any recording. When Rahul Bhatia came to know about it, he told the entire things to Umesh Sharma. Due to this, Umesh Sharma sent me threatening messages over Whats App stating that if you will fail in sting operations then I will destroy your career and will kill you at the place where nobody will save you.**

(7) Umesh Sharma CEO was very much annoyed and he said that he wants results of sting and all the arrangements have been done for this. He said money has been arranged, which will be offered to officers as

a bribe to instable the Government and this was also supported by Rahul Bhatia. Rahul Bhatia used to give his equal share in arranging money. They were saying that this work has to be done. Rahul Bhatia was completely with Umesh Sharma in this conspiracy.

(8) Umesh Sharma alongwith his associates generally comes Dehradun and he has one residence in Dehradun, Purukul and he also carry out his activities from Gautam Buddh Nagar, Gaziabad. Umesh Sharma also threatened me that bastard I will send you behind the bars and you are nothing in front of me. So many ministers and leaders were following me. I have done stings of various ministers of Central Government. I had given you only one small work and you cannot do it. Government is my hands. Have you not seen that Government has withdrawn all the cases against me.

(9) Umesh Kumar has hatched a deep conspiracy in which alongwith Umesh Kumar, Praveen Sahni, Saurabh Sahni, Rahul Bhatia, other **employees, local leaders and businessmen are involved, who want to cause disturbance and violence in the State and I know this. I feel it my duty to bring out all these to bring out in front of the society.** I have an apprehension that Umesh Kumar alongwith his associates can cause any untoward act with me and my family and can send me behind bars for whole life. Umesh Kumar alongwith his friends for his benefit investigating with his associates for giving bribery to his associates. **Umesh Kumar has kept all the instruments, documents, recording devices, memory card at his resident, Abhimanyu Tennis Academy, near Malsi Green, in front** of MAX Hospital, Diversion Road, Dehradun and Indrapurm, ATS Indrapuram Tower No.19, Flat No. 19241, Gaziabad and Office H-174, Sector 63, Samachar Plus Noida (7) Gautam Buddh Nagar and at the residence of Rahul Bhatia, Awas Panash Valley, Sahastradhara Road, Dehradun. He is trying to destroy and hide all these things. I am giving all these information by taking risk of my life. Therefore, it is request to you that legal action be taken on the report of applicant and protection be given to me and my family."

(emphasis supplied)

DEVELOPMENTS IN FIR NO. 100 OF 2018

13. Developments in this FIR No. 100 of 2018 are important. This FIR was lodged on 10.08.2018. According to the petitioner:-

13.1. On or about 14.08.2018, the Investigating Officer (IO) in FIR No. 100 of 2018 filed an application under Sections

70 and 91 of the Code of Criminal Procedure, 1973 (for short "the Code") before the Court seeking arrest and search warrants of the petitioner. But, it was rejected on 14.08.2018.

13.2. On 18.08.2018, another application seeking arrest and search warrant was filed by the IO before the Court, but it was also rejected by the Court while observing that for the investigation of alleged offences under Section 386, 388 and 120B IPC, the documents sought namely electronic device and gadgets have no concern.

13.3. On 24.08.2018, another application filed by the IO for arrest and search warrants was rejected.

13.4. This order dated 24.08.2018 passed by the court of Magistrate was challenged in criminal revision by the IO, which was allowed on 12.10.2018 without notice to the petitioner and pursuant to it, on 22.10.2018, the Magistrate concerned, issued search and arrest warrants.

13.5. On 28.10.2018, the petitioner was arrested by the Police in FIR No. 100 of 2018.

13.6. A Criminal Case No. 207 of 2017 based on FIR No. 16 of 2017, Police Station Rajpur, District Dehradun ("FIR No 16 of 2017") was pending against the petitioner. The police also obtained the petitioner's custody in FIR No. 16 of 2017 on 30.10.2018, by not placing correct facts before the court that the High Court had in WPCRL No. 818 of 2010 passed stay order in the matter, on 03.06.2014.

13.7. On 16.11.2018, the petitioner was granted bail in FIR No. 100 of 2018 but due to production warrant in some other case he was not released and he was taken to Ranchi, Jharkhand. Finally, the petitioner was released from custody in the month of November, 2018.

13.8. In between there were other FIRs also filed against the petitioner of which mention will be made at the subsequent stage.

13.9. After his release, the petitioner did a press conference on 28.01.2019 at Delhi with regard to the corruption involving the TSRCM, which according to the petitioner was widely circulated in national media and the issue was also raised in the Legislative Assembly of the State.

13.10. It may be noted here that during the progress of FIR No. 100 of 2018, various petitions were filed in connection with FIR No. 100 of 2018 and the petitioner also filed WPCRL No. 2113 of 2018, which is still pending. It will be discussed to certain extent at a later stage.

13.11. In FIR No. 100 of 2018, Charge Sheet No. 32 of 2019 was filed on 25.03.2019 (Annexure 34). The IO records in the charge sheet as hereunder(*translation*) :-

> …….From the entire investigation and from the documentary evidences, this fact is proved that the accused Umesh Kumar Sharma in collusion with accused Rahul Bhatia in the month of January, 2018 has planned the commission of present sting operation and also started execution process of the same and the execution proceedings were continuously going on till the month of May, 2018. **But, intentionally, sting operation was not telecasted.** On 10.08.2018, after registration of the FIR in this regard and thereafter, on 28.10.2018 after the arrest of Umesh Kumar Sharma and on 16.11.2018 after the bail of the accused and on **27.01.2019, accused Umesh Kumar Sharma in this regard conducted a press conference and then the telecasting of above sting was came into light. It is clear that the sting was conducted with the *malafide* intention and to use it in his own interest has intentionally has not broadcasted the same at that time.** In this regard, Hon'ble Supreme Court in **Rajat Prasad Vs. CBI, in the year 2014 in its judgment has held that a gap of twelve days in conducting the sting and telecasting of the said sting is a long gap.** Apart from this, accused Umesh Kumar before the Hon'ble High Court at **Nainital in Cr. R.P. No. 2113/07 of 2018 has admitted the fact of conducting the sting operation**. From the above facts and investigation it is proved that accused Umesh Kumar Sharma and Rahul Bhatia with an intent to cause damage to complaint Pt. Ayush Gaur by putting him in danger **has got conducted the sting and presented him as representative of the company Lalit Group of Hotels and as a representative** of Shobotics Educational Network at all the places has presented the complainant by different names, which falls under Section 419 of the Code. Apart from this, in this case, the accused persons Umesh Kumar Sharma, Rahul Bhatia with an intent to put the complainant Pt Ayush Gaur to cause damage to him has dishonestly got the sting done from him and used and get that chip with the intent to use as a precious security. As it is clear from the statement of the

> victim Sanjay Gupta etc. This offence comes within the ambit of Sections 385 and 387 IPC. Therefore, from the investigation, commission of offence under Sections 386 and 388 IPC has not been made out. Thus Sections 386 and 388 IPC have been removed and Sections 385, 387, 419 and 504 IPC have been added……..
>
> (emphasis supplied)

WRIT PETITION (CRIMINAL) NO. 2113 OF 2018

14. In FIR No. 100 of 2018, the petitioner was arrested on 28.10.2018. While in custody, on behalf of the petitioner, WPCRL No. 2113 of 2018 was preferred, challenging the FIR No. 100 of 2018. The petitioner also sought inquiry by independent agency in the corruption case of TSRCM and his relatives (copy of WPCRL No. 2113 of 2018 is annexure 26). In fact in WPCRL No. 2113 of 2018, the petitioner sought quashing of FIR No. 100 of 2018 and also sought quashing of the order of the Court by which search and arrest warrants were issued against him. The petitioner in WPCRL No. 2113 of 2018 also sought transfer of investigation in FIR No. 100 of 2018 and of the sting operation conducted by the first informant, by an independent special investigation team comprising of Senior Officers, headed by independent and competent persons, which are not administrativelysubordinate to the State of Uttarakhand or in alternate transfer of investigation to DIG Level, Central Bureau of Investigation (CBI).

15. Initially, in WPCRL No. 2113 of 2018, petitioner confined himself to FIR No. 100 of 2018 and sting conducted by the first informant. But, in its rejoinder affidavit filed in WPCRL No. 2113 of 2018, the petitioner did not confine himself to the contents of the FIR No. 100 of 2018, as such and the sting conducted in the months of April, May and June, 2018 by the first informant. But, in para 12-A of his rejoinder affidavit dated 09.03.2019, the petitioner has, in fact, disclosed all those averments (it is almost verbatim reproduction), which he has made in para 8of the instant writ petition, which relates to deposition of bribe by Amratesh Singh Chauhan in the accounts of the persons, who were close to TSRCM (Para

8 of the instant petition is quoted at para no.10 of this judgment as, hereinbefore). He has given the details of the accounts and the whatsapp messages exchanged between the Amratesh Singh Chauhan and the TSRCM. In the rejoinder affidavit at heading **IV**, the petitioner also sought CBI inquiry of the sting operation conducted by the first informant, under the Prevention of Corruption Act, 1988.

16. A few facts relating to WPCRL No. 2113 of 2018 would also require attention to decide the instant writ petition. This Court is cautious that the narration of facts has gone a little long, but narration of these facts is necessary to understand and decide the controversy.

17. In WPCRL No. 2113 of 2018, rejoinder affidavit is dated 09.03.2019. It was submitted in the Court on 25.03.2019. WPCRL No. 2113 of 2018 was heard subsequent to 25.03.2019, but it remained part heard on 14.05.2019. It may be noted that in fact, in WPCRL No. 2113 of 2018, an affidavit dated 16.04.2018 was filed on 22.04.2019 by the Station House Officer, Police Station Rajpur, District Dehradun, by which, the Court was informed that the charge sheet has been filed in FIR No. 100 of 2018.

18. In WPCRL No. 2113 of 2018, on 28.05.2019, the Court observed as hereunder:-

> "Serious allegations of corruption are leveled in the rejoinder affidavit filed by the petitioner. **While the petitioner ought to have filed a supplementary affidavit, to enable the respondents to file a supplementary counter affidavit thereto, the seriousness of these allegations, in our view, would warrant a rebuttal by the respondents. Sri J.S. Virk, learned A.G.A. for the State would submit that a supplementary counter affidavit would be filed, in response to the specific allegations in the rejoinder affidavit**, by the next date of hearing; and a copy of the charge-sheet and its enclosures, along with translated copies in English at least of the charge-sheet and of the **watsapp referred to** in the **F.I.R, shall also be placed before this Court by the next date** of hearing."
>
> (emphasis supplied)

19. In WPCRL No. 2113 of 2018, on 27.06.2019, the State filed rebuttal affidavit (Annexure 1 to the additional affidavit of the State filed in the

instant case on 28.09.2020) to the rejoinder affidavit filed by the petitioner. The State, in the rebuttal affidavit stated that, "**The contents of para 12(A), 1, 2, 3, 4, 5, 6, 7, 8 of the rejoinder affidavit were not part of the investigation neither the documents were handed over to the investigating officer (deponent) during investigation**". TSRCM is also a party in WPCRL No. 2113 of 2018 but neither he nor the State responded to the allegations levelled by the petitioner, in his rejoinder affidavit. Be it noted, this Court on 28.05.2019, had required a rebuttal/ response to the specific allegations in the rejoinder affidavit.

20. Hearing on WPCRL No. 2113 of 2018 is still on. The writ petition is still pending (this Court has requisitioned the record of WPCRL No. 2113 of 2018 at the time of argument of the instant petition, so as to make references, as and when necessary and this is what the Court is doing).

FIR NO. 354 OF 2014

21. Amratesh Singh Chauhan, who allegedly gave bribe to TSRCM by depositing Rs.25 Lakhs in various bank accounts given by the TSRCM, also filed an FIR No. 354 of 2018 against the petitioner on 12.11.2018 at the Police Station Argoda, Ranchi on 04.11.2018 under Section 124 A, 387, 389, 506 IPC (for short "FIR No. 354 of 2018). A copy of the FIR is annexure 25 to the petition, which is as hereunder (*translation*);

Dated:04.11.2018

To,

Station Incharge,
Argoda, P.S. Ranchi.

Subject: Complaint regarding using abusive language, implicating in false cases, extending threats to life by Umesh Kumar Sharma for providing information about Government with an intent to hatch conspiracy against the Uttarakhand Government.

Sir,

It is humbly prayed that I Amratesh Singh Chauhan aged 48 years,son of Late Ram Nandan Singh, am resident of 49, New A.G. Cooperative Colony, Kadru, P.S. Argoda, Ranchi. Since10th July 2018 and continuously thereafter till last

few days one person named Umesh Kumar Sharma, introducing himself as Owner of Samachar Plus Channel Resident of Tower No.19, Flat No. 1924, Indirapurma Ghaziabad, Uttarpradesh is calling me from his mobile no. 9457708505 to my mobile no. 9431361039 and 7004780439 and through whatsapp messages is saying me help him in a conspiracy to demolish the government of Uttarakhand and for this gathering and providing secrete information of some politicians over there, so that political instability can be caused in the State and the democratic government over there can be turned down, as I have good relations in Uttarakhand at party level.

On my refusal he is threatened me that he will implicate me in false cases of Enforcement Directorate (ED). Apart from this, Umesh Sharma used filthy abusive language with me and said that he will get me kidnapped and killed. He started pressurizing upon me to come Delhi or Dehradun to meet him and in case I failed to do so then I will loose my life. When my wife picked upon the phone then he abused here and threatened that he will kidnap me from home and also said that be ready to face dire consequences and threatened that he will implicate me in false Enforcement Directorate's (ED) case. When I did not pick the whatsapp call then he threatened me by sending messages. I and my family are living in a terrified atmosphere. Recently through news sources I came to know about Umesh Kumar's story. I came to know that he is originally a professional blackmailer and in the garb of Channel he extort money. After getting full information about Umesh Kumar Sharma and knowing about registration of cases against him, I in order to save life and property of me and my family and to save the Uttarakhand Government and to save from the conspiracy to people associated with the government I am getting this First Information lodged against this act of Umesh Kumar Sharma.

Therefore, it is requested to your goodself that kindly take cognizance of my application and register FIR against Umesh Kumar Sharma and his friends and take appropriate legal action.

Yours
Sd/- Amratesh Singh Chauhan
49, New A.G. Co-operative Colony
Kadru, P.S. Argoda.
Ranchi-834002, Jharkhand
(emphasis supplied)

22. On 10.11.2018, the Court at Jharkhand issued production warrants against the petitioner in FIR No. 354 of 2018 because at the relevant time, the petitioner was in judicial custody in FIR No. 100 of 2018 in Dehradun, Uttarakhand. On 22.11.2018, Charge Sheet No. 261 of 2018 dated 22.11.2018 was filed in FIR No. 354 of 2018 under Sections 389, 506, 509 IPC in the Court of Magistrate and cognizance was taken on it by the court on 26.11.2018. In this case, petitioner was also granted bail

on 26.11.2018. But he was not released because he was wanted in another case FIR No. 128 of 2018, Police Station Rajpur, Dehradun and production warrant in this case was received in Ranchi jail on 01.11.2018 by e-mail. A few more FIRs have been referred to by the petitioner, a brief mention of them may also be necessary.

FIR NO. 16 OF 2017

23. On 09.02.2007, A Veer Krishna Sharma lodged an FIR No. 16 of 2007, against Smt. Manoranjani Sharma and seven others including the petitioner at Police Station Rajpur, District Dehradun (FIR No. 16 of 2007). According to this FIR, the land of the father of Veer Krishna Sharma was wrongly recorded by his step mother Smt. Manoranjani Sharma, in order to grab it and the petitioner was also involved in it.

24. In FIR No. 16 of 2007, charge sheet was initially filed on 15.04.2007 and a supplementary charge sheet was filed on 13.03.2009. On 01.05.2007, cognizance was taken and proceedings of the Case No. 207 of 2007, State Vs. Manoranjani Sharma and others was instituted in the court of Special Judicial Magistrate, CBI, Dehradun. In connection with FIR No. 16 of 2007, C482 No. 818 of 2010 was filed in this Court, in which, initially, on 01.09.2010, Stay was granted and subsequently, it was further renewed on 03.06.2014. Finally C482 No. 818 of 2010 was dismissed on 26.11.2018, against it, SLP (Criminal) No. 10714 of 2018 was filed, in which, on 14.12.2018, interim stay of the impugned order was granted by the Hon'ble Supreme Court.

25. Reference to this FIR has been made by the petitioner alleging that when he was in custody in FIR No. 100 of 2018, on 30.10.2018 by misleading the Court his custody was also obtained in FIR No. 16 of 2017 and while doing so, the stay order dated 03.06.2014 passed by this Court in C-482 No. 818 of 2010 was suppressed.

FIR NO. 128 OF 2018

26. This FIR was lodged by a Vinay Malik, under Sections 147, 148, 149, 386, 427, 452 and 506IPC, on 01.11.2018 at Police Station Rajpur, District Dehradun (for short "FIR No.128 of 2018"), According to it, the petitioner and others tried to grab his property, attacked him etc. In this FIR, charge sheet was filed on 25.05.2019 and cognizance was taken, which was basis of Criminal Case No. 3588 of 2019, State Vs. Umesh Kumar and others, in the court of Additional Chief Judicial Magistrate 3rd, Dehradun. In this regard, WPCRL No. 2148 of 2018 was filed in this Court. Reference to this FIR has been made that when on 26.11.2018, the petitioner was granted bail in FIR No. 354 of 2018, he was not released because Dehradun court had sent a production warrant to Ranchi Jail in FIR No. 128 of 2018. The production warrant was subsequently cancelled by this High Court in WPCRL No. 2148 of 2018 on 29.11.2012.

SEPARATE PETITIONS

27. In WPCRL No. 1182 of 2020 the petitioner seeks quashing of the communication dated 07.07.2020.

28. In WPCRL No. 1187 of 2020 the petitioner seeks quashing of the instant FIR.

29. In WPCRL No. 1285 of 2020 the petitioner, (according to the petitioner he is a journalist and is editor of a news portal "Parwatjan") seeking quashing of the communication dated 07.07.2020, the inquiry report dated 30.07.2020 and the instant FIR.

30. All these petitions have been heard together. In WPCRL No. 1182 and 1187 of 2020, Amratesh Singh Chauhan is the respondent no. 3. On 07.10.2020, the Court while observing that notices were not issued to Amratesh Singh Chauhan, directed for deletion of respondent no. 3 from the array of parties. But, the fact remains that in WPCRL no. 1285 of

2020, the respondent no. 2, Amratesh Singh Chauhan was issued notice on 07.09.2020 through post but he did not appear. The envelope sent through post did not return, therefore, service had alreadybeen sufficient upon Amratesh Singh Chauhan, before directions were issued for deletion of his name from the array of parties.

TRANSFER PETITION

31. On 23.08.2019, the petitioner filed the Transfer Petition (Crl.) Nos. 534 – 536 of 2019, seeking transfer of the cases based on FIR No. 16 of 2007, FIR No. 100 of 2018 and FIR No. 128 of 2018 and on 21.10.2019, the Hon'ble Supreme Court stayed the further proceedings in all these three FIRs. The Transfer Petition (Crl.) Nos. 534 – 536 of 2019 has been dismissed on 16.10.2020 as is evident from the official website of the Hon'ble Supreme Court.

GROUNDS

32. Instant petition has been filed mainly on the following grounds:-

32.1. The inquiry on communication dated 07.07.2017 is without any statutory provisions. The procedure adopted on the communication dated 07.07.2020 is bad in law.

32.2. Each and every document forming the basis of the social media publication was in public domain, as the same formed the basis of the press conference dated 28.01.2019 done by the petitioner and it was within the knowledge of respondents as reflected in the charge sheet no. 32 of 2019 filed in FIR No. 100 of 2018. There is overlapping and common thread in the three FIRs, namely FIR No. 100 of 2018, FIR No. 354 of 2018 and the instant FIR and hence, FIR No. 265 of 2020 could not have been registered.

32.3. No *prima facie* case is made out. The petitioner discharged his duties as a Journalist and whatever he

published, had already been made public by Amratesh Singh Chauhan.

32.4. It is a maliciousprosecution.

33. The State in its counter affidavit denied all the allegations. According to the State, the decision in the case of **Lalita Kumari Vs. Government of UP and others, (2014) 2 SCC 1**, takes within its fold,the prospect of conducting preliminary inquiry before registration of FIR in fit cases. The State denied that the Police conducted an inquiry in violation of the mandate of the law. The informant in his counter affidavit also referred to the judgment in the case of Lalita Kumari*(supra)* on this point.

34. According to the State, *prima facie,* offences have been made out. FIR No. 100 of 2018 is not even remotely connected with it. FIR No. 16 of 2007 and FIR No. 128 of 2018 are with regard to an attempt to land grabbing and FIR No. 100 of 2018 relates to threats for extortion. The petition is replete with falsehoods and while the petitioner repeatedly claims that the subject matter of the investigation of the instant FIR is already subject matter of some other case in a bid to mislead this Court, not a single document is produced on the record by the petitioner to support his contention.

35. The State also denied that the FIR registered against the petitioner is malicious and the conduct of the authorities is arbitrary and highhanded.

36. According to the informant, the claim made in social media publication by the petitioner is false, which means that the Bank receipts/deposit slips in his possession have been forged and fabricated by him. The inquiry reveals commission of cognizable offence,especially of forgery. With regard to the connection with the earlier FIRs, according to the informant, the earlier FIRs are on distinct subjects and in no way connected to the present FIR.

PROCEEDING

37. In this petition, initially, when the matter was heard on 06.08.2020, interim protection was provided to the petitioner. Subsequent to it, an application was filed on behalf of the petitioner for rectifying the factual mistakes in the order dated 06.08.2020. State filed objection against it. State also filed an application for vacation of the interim directions contained in the order dated 06.08.2020.

38. On 14.09.2020, on behalf of the State, arguments have been advanced on the stay vacation application. Mainly it is argued that the interim protection should be lifted for the following reasons:-

38.1. There is no similarity in FIR No. 100 of 2018, FIR No. 354 of 2018 and FIR No. 265 of 2020 (the instant FIR).

38.2. Order dated 06.08.2020 has been obtained by the petitioner by wrong assertions namely:-

38.2.1. FIR No. 354 of 2018 was the first FIR.

38.2.2. FIR No. 354 of 2018 was with regard to extortion on the pretext of demolishing Uttarakhand Government by hatching a conspiracy.

38.3. Petitioner further made wrong assertions in the correction application namely : -

38.3.1. That due to hearing being online and because of the common link provided for all the matters, there was a constant disturbance during hearing.

38.3.2. FIR No. 100 of 2018 was the first FIR relating to the sting operation. FIR No. 354 of 2010 was not the first FIR, but the second FIR on the same set of allegations and Whatsapp messages exchanged between Amratesh Singh Chauhan and TSRCM.

38.3.3. That in both the cases, the allegations advanced and the scope of inquiry was messages and bank accounts which formed the basis of the present FIR.

38.4. The conduct of the petitioner prior to the interim order also disentitles him to any protection because he did not cooperate during inquiry in the communication dated 07.07.2020 and post interim order, when IO requested him to cooperate in the investigation, he did not cooperate instead he threatened the police. Reference has been made to various documents.

38.5. The claim made by the petitioner in his social media publication with regard to money deposition in the account of the informant and the relationship of the wife of the informant with the wife of TSRCM is false. The petitioner is not innocent.

39. On 14.09.2020 itself, the court had all the materials to hear the matter finally. On the subsequent date, on behalf of the State, it was argued that matter may be heard on the stay vacation application and if the court finds that interim order was obtained on wrong assertions then there is no necessity to hear the main petition. But, since all the pleadings had already been exchanged, the court proceeded to decide the main petition.

40. Separate order on the application for vacation of interim order is not required now because the matter proceeds towards its final disposal.In so far as correction application is concerned, the fact remains that according to the petition, the petitioner is a journalist and the first FIR is FIR No. 100 of 2018. The order dated 06.08.2020 should be read in the light of these averments. The Court does not consider it necessary that any separate disposal of the correction application is required. The observations made herein before decides the correction application.

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

ARGUMENTS

ON BEHALF OF THE PETITIONERS

42. Learned Senior Counsel for the petitioner would submit that the social media publication done by the petitioner is not something new. In fact, Amratesh Singh Chauhan revealed it to a Journalist Rajesh Sharma and he revealed it to the petitioner. Theauthors of the Whatsapp messagesareAmratesh Singh Chauhan and TSRCM. The Whatsapp messages revealed the bank accounts, in which money was to be deposited by Amratesh Singh Chauhan. Bank receipts were provided by Amratesh Singh Chauhan. They were not authored by the petitioner, but it is argued that :-

> **42.1.** The State has not asked anything from the authors of the Whatsapp messages. It is argued that the money was not deposited in the account of the informant and even if the wife of the informant is not the sister of the wife of the TSRCM, it does not make out any case. The petitioner is a Journalist. He put in public domain the information, which was furnished to him. For this, he cannot be persecuted. He did not forge any document. If everything as stated in the FIR is accepted as true, even then no offence is made out against the petitioner

and it makes out the case for intervention by this Court, in view of the judgment in the case of **State of Haryana and Others Vs. Bhajan Lal and Others, 1992 Supp (1) SCC 335**.

42.2. The statement that the amount was deposited in the account of the first informant and the wife of the first informant is the real sister of the wife of TSRCM, if false, may be at the most a case for defamation, for which only a complaint may be filed but FIR cannot be registered.

42.3. The procedure adopted on the communication dated 07.07.2020 is not in accordance with law. Learned Senior Counsel would argue that if according to the informant, the communication dated 07.07.2020 was not disclosing commission of any offence, in such a case there was no jurisdiction to conduct preliminary inquiry. If communication dated 07.07.2020 did not reveal any cognizable offence, the principles laid down in the case of Lalita Kumari*(supra)* does not permit such inquiry as has been conducted in the instant case. If communication dated 07.07.2020 is not an FIR, as stated by the State, then even after inquiry, the FIR in the instant case, cannot be said to have revealed any cognizable offence, because in the FIR dated 31.07.2020, the only addition is the inquiry report. It is argued that the FIR dated 31.07.2020 is, in fact, the statement under Section 162 of the Code. It is not an FIR.

42.4. The messages, which were made public by the petitioner, were authored by Amratesh Singh Chauhan and TSRCM. The petitioner was given notice on 10.08.2020. To which, he replied promptly on 12.08.2020. The petitioner offered for interrogation, he was throughout cooperating with the IO. It is argued that in fact, messages sent by Amratesh Singh Chauhan reveal that he was upset because he did not get what he wanted. Therefore, he revealed his Whatsapp messages exchanged with TSRCM, and his conversation

recorded with Media Advisor of TSRCM. Learned Senior Counsel referred to those documents and conversation also. The petitioner had no *mens rea* in making the social media publication.

42.5. Prosecution is *malafide* since inception. It is argued that the petitioner is a Journalist. He cannot be persecuted by the State, in the manner as it is being done. The authors of the Whatsapp messages are not being inquired; nobody denies the authenticity of the Whatsapp messages. State says that it is irrelevant and it itself is *malafide*. Learned Senior Counsel also referred to the communication dated 07.07.2020 in which first informant has admitted that his bank accounts numbers were revealed and based on it, it is argued that it is an admission that in the Whatsapp messages his account numbers were revealed, which it is argued, were given to Amratesh Singh Chauhan by TSRCM.

42.6. Learned Senior Counsel for the petitioner argued that the entire process smells *malafide*. On communication dated 07.07.2020 the informant seeks inquiry from a senior officer. The Deputy Inspector General of Police (DIG) seeks a report till 20.07.2020. This he does on 19.07.2020. The inquiry report was prepared on 30.07.2020. The RTI query of the informant was replied on 31.07.2020 and on the same date FIR was lodged and same night Rajesh Sharma was arrested. Learned Senior Counsel would argue that it all reflects the haste with which the State has proceeded. It is argued that how could informant seek inquiry from a senior officer and how it could be acceded to? The arguments have also been advanced as to why the communication dated 07.07.2020 was marked to the Chief Minister. It is argued that it is a **tragedy** that the person who seeks to expose wrong doings is being persecuted by the State and at the same time it is a **comedy** that the authors of the Whatsapp messages are being protected.

42.7. Learned Senior Counsel would argue that the contents of social media publication made by the petitioner were already in public domain. "*Teesri Aankh Ka Tehelka*" had published it in the year 2019 which was objected to by the informant, in which, subsequently an interview was also given by the informant. In WPCRL No. 2113 of 2018, in its rejoinder affidavit, the petitioner has stated all those things in the year 2019, which is part of the social media publication. A press conference was also conducted by the petitioner on 28.01.2019 and he had revealed all the contents of the social media publication in the press conference. Thereafter, this matter was debated in the Legislative Assembly of the State, when it was told in the Assembly that the matter is *sub-judice*. It is argued that the instant matter may be a subject matter for investigation in FIR No. 100 of 2018, but new FIR cannot be lodged on this. In support of his contention, learned Senior Counsel relied upon the principles of law as laid down in the case **AmitbhaiAnilchandra Shah Vs. Central Bureau of Investigation, (2013) 6 SCC 348**.

ON BEHALF OF THE STATE

43. Learned Senior Counsel for the State would submit that petitioner is not even a Journalist. But he is masquerading to be a Journalist. Reference has been made to FIR No. 100 of 2018, which was filed by the first informant against the petitioner particularly the following lines:-

43.1. ……..In sting operation, these people trap ministers and officers through spy camera. But Umesh Sharma don't telecast these news over a channel and under a preplanned conspiracy, he earns money by blackmailing them. With this intention, he has sent Madhu and Rahul Bhatia here in Dehradun, Uttarakhand. During this period Umesh continuously pressurizing me over phone or

Whatsapp for trapping ministers, bureaucrats and officers. Serial-wise details of which are as under:-……..

43.2. ……if only once we can trap Chief Secretary, then it will be beneficial for us and then none of our work will be stopped and whatever we want that will be fulfilled because there will be political disability (*sickinstability*) in the State……

43.3. ……by using me, they were planning to cause disturbance and instability in the State…….

43.4. ……He said money has been arranged, which will be offered to officers as bribe to instable the Government ……

43.5. …….Umesh Kumar has hatched deep conspiracy in which alongwith Anuj Kumar, Praveen Sahani, Saurabh Sahani, Bhatia, other employees, local leaders and businessmen are involved, who want to cause disturbance and violence in the State…….

43.6. …….Umesh Kumar alongwith his associates can cause any untoward act with me and my family and can send me behind bars for whole life.

44. Reference has also been made by learned Senior Counsel to FIR No. 354 of 2018, particularly, the following lines have been emphasized:-

44.1. ……..and through Whatsapp messages is saying me to help him in a conspiracy to demolish the Government of Uttrakhand and for this gathering and providing secrete information of some politician over there……..

44.2. ……..I came to know that he is originally a professional blackmailer and in the garb of channel, he extorts money……....

45. On behalf of the State it is also argued that the FIR in the instant case is within the narrow and specific area with regard to two allegations namely:-

45.1. That the money was deposited in the accounts of the informant, which was meant as a bribe to TSRCM

45.2. That the wife of informant is sister of the wife of TSRCM.

46. Learned Senior Counsel for the State also raised the following points in his argument: -

46.1. The petitioner has admitted that these allegations are not correct and he claims himself to be innocent, but only the basis of these statements the investigation cannot be stopped in a proceeding under Section 482 of the Code. The investigation must continue. Reference has also been made to paragraph 3 sub-clause (d) (e) and (g) of the rejoinder affidavit filed by the petitioner, to argue that the petitioner himself has admitted that there is not a single document to show that any amount was deposited in the accounts of the informant or his wife.

46.2. The Whatsapp messageswhich have been referred to on behalf of the petitioners cannot be read into evidence. They are irrelevant; the Whatsapp messages were between two people, who are not before the court; the genuineness, reliability ortruthfulness of the Whatsapp messages is still questioned; it is an electronic record; there is no certificate with regard to their authenticity. In fact, certain Whatsapp messages have been referred to, to argue that apparently they appear to be doubtful.

46.3. The FIR No.100/2018 and FIR No. 354 of 2018 are distinct. They are not related to the informant. The informant had nothing to do with earlier FIRs. They are not even remotely connected with the instant FIR. It is argued that based on the rejoinder affidavit in WPCRL No. 2113 of

2018, sameness cannot be accepted. Even in WPCRL No. 2113 of 2018, on behalf of the State, a rebuttal affidavit was filed to the rejoinder affidavit of the petitioner, categorically deposing that the contents of rejoinder affidavit were irrelevant to and unconnected to FIR No. 100 of 2018. The allegations are not same.

46.4. The jurisdiction under Section 482 of the Code, is invoked in rare and exceptional circumstances, when situation warrants. In the cases, which require investigation, the jurisdiction is not invoked to thwart the investigation. In the instant case, it is argued that prima facie, offences are made out against the petitioner. Learned Senior Counsel read over Section 415 IPC to argue that, in fact, by the social media publication the petitioner induced general public to make comments which,in turn, resulted inharm to the informant's body, mind, reputation etc. There is *mens rea*. In the social media publication, the petitioner flashed and waived some deposit receipts and narrated that the amount was deposited in the account of the informant and claimed that he had the bank receipts, which means he forged the receipts, therefore, investigation must go on.

46.5. The judgment in the case of Lalita Kumari (supra), makes it permissible and in fact, obligatory to conduct a preliminary inquiry in cases of corruption. Reference has also been made to the judgment in the case of **Superintendent of Police, CBI Vs. Tapan Kumar Singh, (2003) 6 SCC 175** to argue that, in fact, it also permits preliminary inquiry.

46.6. Even if it is presumed that preliminary inquiry was not permissible, it makes no difference at all because if it is technicality in procedure. It may not have any effect in the proceedings unless any prejudice is caused to the petitioner.It is argued that there is no prejudice shown by the petitioner

and without prejudice even if, there is any irregularity,then neither FIR nor the investigation can be quashed.

46.7. The prosecution is not malicious. A case has been made out against the petitioners, which requires deep scrutiny during investigation. In the cases of *malafide*, it is argued that the person(s), against whom malicious intention is attributed, should be a party to the proceedings. In the proceedings under Section 482 of the Code, the Court cannot travel beyond the material, which is part of the police report or which was in the record available to the IO. On this point, learned counsel referred to the judgment in the case of **State of Bihar and another Vs. P.P. Sharma and another, 1992 Supp. 1 SCC 222**, particularly para 22 of it. It is as hereunder;

> **"22.** The question of mala fide exercise of power assumes significance only when the criminal prosecution is initiated on extraneous considerations and for an unauthorised purpose. There is no material whatsoever in this case to show that on the date when the FIR was lodged by R.K. Singh he was activated by bias or had any reason to act maliciously. The dominant purpose of registering the case against the respondents was to have an investigation done into the allegations contained in the FIR and in the event of there being sufficient material in support of the allegations to present the charge-sheet before the court. There is no material to show that the dominant object of registering the case was the character assassination of the respondents or to harass and humiliate them. This Court in *State of Bihar* v. *J.A.C. Saldhana*[1] has held that when the information is lodged at the police station and an offence is registered, the mala fides of the informant would be of secondary importance. It is the material collected during the investigation which decides the fate of the accused person. This Court in *State of Haryana* v. *Ch. Bhajan Lal*[2] permitted the State Government to hold investigation afresh against Ch. Bhajan Lal in spite of the fact that prosecution was lodged at the instance of Dharam Pal who was inimical towards Bhajan Lal"

47. It is argued that in the instant case, FIR has been lodged by the informant because it is he who has been harmed by the action of the petitioner. The petitioner on social media publication made false statements, which he has now admitted.

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[1] (1980) 1 SCC 554: 1980 SCC (Cri) 272: (1980) 2 SCR 16
[2] 19992 Supp(1) SCC 335: JT 1990(4) SC 650

ON BEHALF OF THE INFORMANT

48. On behalf of the informant, learned counsel would adopt the arguments as advanced on behalf of the State. In addition, learned counsel would submit that the petitioner in the social media publication flashed certain receipts and claimed that money was deposited in the account of informant. It means that the petitioner had forged and fabricated such receipts.

49. On behalf of the petitioner and State detailed written submissions have also been submitted in which various other case laws have been cited, which, as and when necessary, will find place during the discussions.

DISCUSSION

50. There are petitions under Section 482 of the Code read with Article 226 of the Constitution of India.The jurisdiction is too wide, but much guided by the settled legal principles. Apart from other factors, the proceedings are sought to be quashed on the grounds that no prima facie case is made out and the prosecution is*malafide*.

51. In the case of BhajanLal (supra), Hon'ble Supreme Court discussed the scope under Article 226 of Constitution of India with regard to the criminal proceedings and in para nos. 102 and 103 held as hereunder:-

> "**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

> **(1) Where the allegations made in the first information report or 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 a case against the accused.**
>
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
>
> (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
>
> (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
>
> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
>
> (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
>
> **(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.**
>
> **103.** We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."
>
> (emphasis supplied)

52. These principles have been followed in subsequent cases. It is also settled law that at this stage, the material which is not the part of the investigation is not generally considered to examine the complicity of the petitioner. What is relevant is the contents of the FIR and the material collected during investigation. Of course, when it comes to

malafide,perhaps some other materials may be looked into because after all *malafide* is not some action, it is the intention behind an action. It is also much settled that in case FIR discloses commission of cognizable offence interference should not be made and a legitimate prosecution should not be thwarted at its threshold. But, it is also equally true that if even *prima facie* case is not made out, a person should not be compelled to undergo the rigmarole of a trial, which takes much time and other resources.

53. According to the petitioner he is a journalist. It is argued on behalf of the State that the petitioner was not a journalist but he is masquerading to be a journalist. FIR No. 100 of 2018 was lodged by the first informant against the petitioner. In that FIR first informant introduced himself as an editor investigation of a TV Channel, of which the petitioner was Editor-in-chief/ CEO. The Court does not propose to scrutinize the material in this case to ascertain as to whether the allegations levelled in FIR 100 of 2018 or in FIR No 354 of 2018 were true or not. Therefore arguments advanced with regard to the profession of the petitioner does not help the State.

THE PRINCIPLE OF SAMENESS

54. The word FIR is not defined as such in the Code. Information in cognizable cases, when given to an Officer in-charge of a Police Station, is reduced to writing.A complete procedure is given under Section 154 of the Code as to how such information is processed. This report given under Section 154 of the Code is FIR. In the case of **T.T. Antony Vs. State of Kerala and others, (2001) 6 SCC 181**, it was, *inter-alia*, held that even the information first entered in the station house diary kept for the purpose by the Police Officer, in-charge of the Police Station is first information report, provided, it is not vague or cryptic. What would be the situation, if after, lodging an FIR some more information with regard to the offence is obtained? What if some more information is received, which may connect contents of the FIR? Should the Police register

another FIR or investigate the matter in the FIR already lodged?" In the case of T.T. Antony (*supra*), the Hon'ble Supreme Court observed that "**it is quite possible and it happens not infrequently that more information than one are given to a Police Officer, in-charge of a Police Station, in respect of the same incident, involving one or more than one cognizable offences, in such a case, he need not enter every one of them, in the station house diary and this is implied in Section 154 of the Code**". It was further observed in para nos. 19 and 20 of the judgment, that;

> "**19.** The scheme of CrPC is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 CrPC on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 CrPC, as the case may be, and forward his report to the Magistrate concerned under Section 173(2) CrPC. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR; he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 CrPC.
>
> **20.** From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 CrPC. **Thus there can be no second FIR and consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences**. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 CrPC."
>
> (emphasis supplied)

55. In the case of **Kari ChoudharyVs. Mst. Sita Devi and others, (2002) 1 SCC 714**, the Court observed that "**of course the legal position is that there cannot be two FIR's against the same accused in respect**

of the same case." In the case of **BabubhaiVs. State of Gujarat and others (2010) 12 SCC 254**, the Court laid down a test for not lodging a second FIR. It is the test of sameness, it has been elaborated in para no.21 of the judgment, which is as hereunder:-

> **"21. In such a case the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction.** If the answer is in the affirmative, the second FIR is liable to be quashed. However, in case, the contrary is proved, where the version in the second FIR is different and they are in respect of the two different incidents/crimes, the second FIR is permissible. In case in respect of the same incident the accused in the first FIR comes forward with a different version or counterclaim, investigation on both the FIR's has to be conducted."
>
> (emphasis supplied)

56. In the case of **Nirmal Singh KahlonVs. State of Punjab and others, (2009) 1 SCC 441**, the Court observed that "**the second FIR, in our opinion, would be maintainable not only because there were different versions, but when new discovery is made on factual foundation. Discoveries may be made by the police authorities at a subsequent stage. Discovery about a larger conspiracy can also surface in another proceeding, as for example, in a case of this nature.**"

(emphasis supplied)

57. In the case of **C. Muniappan and others Vs. State of Tamil Nadu, (2010) 9 SCC 567**, it was observed that if two FIR's relating to one and the same incident are separately lodged, in such cases, they may be clubbed and one charge-sheet may be filed. In the case of **ChirraShivrajVs. State of Andhra Pradesh (2010) 14 SCC 444**, it was held that another FIR which is lodged as a consequence of the event lodged in the firstis not permissible. Such matters should be investigated in the first FIR itself. In the case of Surender**Kaushik and others Vs. State of Uttar Pradeshand others (2013) 5 SCC 148**, the Court held that

"**what is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts, mentioned in the original complaint**."

58. In the case of Amitbhai (*supra*), the Hon'ble Supreme Court discussed the law on the subject and approved the test of sameness and consequent test. The Court observed as hereunder:-

> "**58.3.** Even after filing of such a report, if he comes into possession of further information or material, there is no need to register a fresh FIR, he is empowered to make further investigation normally with the leave of the court and where during further investigation, he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports which is evident from sub-section (8) of Section 173 of the Code. Under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of the Code, only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 of the Code. Thus, there can be no second FIR and, consequently, there can be no fresh investigation on receipt of every subsequent information in respect of the **same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences**.
>
> **58.4.** Further, on receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering FIR in the station house diary, **the officer in charge of the police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file** one or more reports as provided in Section 173 of the Code. Sub-section (8) of Section 173 of the Code empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report(s) to the Magistrate. A case of fresh investigation based on the second or successive FIRs not being a counter-case, filed in connection **with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, is liable to be interfered with by the High Court by exercise of power under Section 482 of the Code or under Articles 226/227 of the Constitution.**
>
> **58.6.** In the case on hand, as explained in the earlier paragraphs, in our opinion, the second FIR was nothing **but a consequence of the event which had taken place** on 25-11-2005/26-11-2005. We have already concluded that this Court

> having reposed faith in **CBI accepted their contention that Tulsiram Prajapati encounter is a part of the same chain of events in which Sohrabuddin and Kausarbi were killed and directed CBI to** "take up" the investigation.
>
> (emphasis supplied)

59. Another question may arise that, what if, in the first FIR, police-report has been submitted and subsequent to it, some new discoveries have been made? In such situation, the Police Officer may undoubtedly, proceed for further investigation as per Section 173 (8) of the Code. In the case of **VinubhaiHaribhai Malaviya and others Vs. State of Gujarat and another, (2019) SCC Online 1346**, the Hon'ble Supreme Court, in fact, held that not only the IO, but even the Court, after taking cognizance, can order further investigation till the trial is not commenced.

60. Mainly reference is being made of FIR No. 100 of 2018. In view of the settled legal position, if FIR No. 100 of 2018 and the instant FIR is with regard to same cognizance offence or with regard to offences which were committed in the same transaction, definitely the FIR No. 265 of 2020 should not have been registered. But, is it so?The test of sameness has been given in the case of Babu Bhai *(supra)*; what was observed in the case of Babu Bhai *(supra)*is that the test of sameness is to be applied to find out whether both the FIRs relate to same incident in respect of the same occurrence or with regard to the incidents which are two or more parts of the same transactions. In Muniyappan's case *(supra)* the consequent test is applied that if the contents of second FIR are consequence to the contents of first FIR, in such cases, the second FIR should not be separately lodged and the investigation may proceed on the first FIR. In fact, in the case of Amit Bhai *(supra)* it was held that if the contents of subsequent FIR are a part of same chain of events which forms basis of first FIR, in such case second FIR should not be lodged.

61. FIR No. 100 of 2018 was lodged by the first informant and broadly the averments were that he was threatened to conduct sting operation for the purposes of "blackmailing", "political instability" "cause disturbance

and instability in the State" "bribe to instable the Government", "cause disturbance and violence in the State" etc. This Court will discuss this FIR a little further at the subsequent stage. Suffice to say, the crux of FIR No. 100 of 2018 was a conspiracy to destabilize the State Government and to cause disturbance and violence in the State. The word preplanned conspiracy is also used in FIR No. 100 of 2018.

62. FIR No. 354 of 2018 was lodged by Amratesh Singh Chauhan with the averments therein that he was being threatened to help the petitioner in a conspiracy to demolish the Government of Uttarakhand. In FIR No. 354 of 2018 in the column of occurrence of offence it is stated that **"extortion on the pretext of demolishing the Uttarakhand Government by hatching a conspiracy"** In fact, arguments with regard to the sameness have not been forcibly made with regard to FIR No. 354 of 2018. But, it is argued with reference to FIR No. 100 of 2018.

63. FIR No. 100 of 2018 was challenged by the petitioner in WPCRL No. 2113 of 2018. Initially, the allegations with regard to the deposition of money as a bribe to TSRCM have not been made, but in the rejoinder affidavit, the petitioner levelled same allegations, which form basis of the social media publication. Can it be considered to examine sameness?

64. In fact, in the case of Amit Bhai *(supra)*, an affidavit filed by the CBI in earlier WPCRL No. 115 of 2007 was considered by the Hon'ble Supreme Court, in which CBI hadcontended that the incident was part of the same conspiracy. In paras 28 and 29 of the judgment in the case of Amit Bhai *(supra)*, it has been considered by the Hon'ble Supreme Court and it was also referred toin para 31. It means that what is contended in the rejoinder affidavit in WPCRL No. 2113 of 2018 may also be considered to the certain extent to examine the sameness. Not only in the rejoinder affidavit of WPCRL No. 2113 of 2018, but according to the petitioner, he held a press conference on 28.01.2019 and revealed all those things, which forms basis of social media publication. It is not the petitioner alone, who hasstated about his press conference dated 28.01.2019 and rejoinder affidavit filed in WPCRL No. 2113 of 2018, but

the IO of FIR No. 100 of 2018 also took notice of the press conference and the rejoinder affidavit. In the charge sheet filed in FIR No. 100 of 2018, the IO has mentioned about the press conference and WPCRL No. 2113 of 2018.

65. FIR No. 100 of 2018 repeatedly writes that the action of the petitioner was to destabilize the State Government to create violence, disturbance etc. In the instant FIR, the informant says that he has been harmed and public have been deceived by the action of the petitioner. But, in its counter affidavit the State in para 4 (in para wise reply) writes that in the instant FIR section 124 A IPC was added,once material came into light, which revealed that the petitioner was indulged in the activities with intend to create turmoil in the State of Uttarakhand by way of sustained and dishonest complaint against the Government of Uttarakhand. It means according to the State, the petitioner has been conspiring to destabilize the State. This is what is written in FIR No. 100 of 2018. This is what State says now. It means according to State itself the conspiracy which the petitioner hatched was to destabilize the State Government. The acts are separate, for example, conducting sting through first informant, who filed FIR No. 100 of 2018 and levelling false allegations against the informant by using social media publication. But, the larger umbrella, according to the State, is conspiracy against the State Government. This makes the whole transaction one.This part of social media publication was within the knowledge of State Government when FIR No. 100 of 2018 was challenged in WPCRL No. 2113 of 2018. Hence, the principle of sameness applies in the instant case. In furtherance of one conspiracy, various acts committed. Some acts were investigated in FIR No. 100 of 2018. The other acts which now form basis of instant FIR were within the knowledge of the State, when FIR No. 100 of 2018 was challenged. FIR No. 100 of 2018 and the instant FIR relate to the offences which were allegedly committed under a conspiracy, in the same transaction. In such a situation, any complaint with regard to allegations, which form part of social media publication and which were part of rejoinder affidavit inWPCRL No. 2113 of 2018 could have been investigated in FIR No. 100

of 2018. The IO would have further investigated the allegations in FIR No. 100 of 2018. But the second FIR i.e. FIR No. 265 of 2018 couldnot have been registered for this purpose. It is not permissible under law. Separate investigation on the instant FIR cannot be allowed. On this ground alone the FIR No. 265 of 2020 deserves to be quashed.

PRIMA FACIE CASE

66. FIR in the instant case is lodged under Sections 420, 467, 468, 469, 471 and 120-B IPC. Mainly, it is alleged that the following false information was publicized by the petitioner.

> **66.1.** That during demonitisation Amratesh Singh Chauhan deposited money in different bank accounts of the informant, his wife and Progressive Dairy Farm Association for paying it to TSRCM as bribe for appointing Amratesh Singh Chauhan as president of Gau Seva Commission and;
>
> **66.2.** That the wife of the informant is real elder sister of the wife of TSRCM.

67. The Court is cautious that at this stage, in the instantproceeding, deeper analysis of any material is not to be made. What is being argued is that no*prima-facie* case is made out against the petitioner. To that extent only the material is being examined.

68. Undoubtedly, the contents which forms the basis of social media publication had already been made public by the petitioner, in the rejoinder filed in WPCRL No. 2113 of 2018. According to the petitioner, he had conducted a press conference on 28.01.2019 and then also he revealed all these things. Subsequent to which, according to the petitioner, the matter was debated in Legislative Assembly of the State. It is also categorical case of the petitioner that Amratesh Singh Chauhan was upset because he did not get what was promised to him, therefore, he revealed

all these facts to a journalist Rajesh Sharma, who revealed it to the petitioner.

69. In fact, the petitioner also filed an additional affidavit, in the instant proceedings, on 29.09.2020 and by way of it, the petitioner revealed that, in fact, the same allegations were earlier published on a web portal namely, "*Teesri Aankh Ka Tehelka*".Thereafter, the informant had lodged a report against the web portal to the Press Council of India. Where the web portal had to file a response, but subsequently, an interview of the informant was published on the web portal namely, "*Teesri Aankh Ka Tehelka*", in which, the informant, in the year 2019 itself stated that no money was deposited in his or in his relatives' account, after demonitisation. The informant had though filed counter-affidavit, but this affidavit dated 29.09.2020 has not been rebutted by the informant. Orally, on behalf of informant, it is argued that the web portal "*Teesri Aankh Ka Tehelka*" had published news regarding some other transactions. What are those? What was the news published on the web portal? It is not even stated, on behalf of the informant. The transcript of the interview, which is filed as Annexure No.6 to the affidavit dated 29.09.2020 of the petitioner, makes it abundantly clear that the transactions relate to Jharkhand, demonitisation and deposition of money in the account of the informant. It is similar and same to the averments, which are now made in the instant FIR. It simply means that the allegations about deposition of money in the account of the informant and his family members were in the public domain much early, in the year 2019 also.

70. On behalf of the State, it is argued that offence under Section 415 IPC is made out because the petitioner by way of a social media publication induced general public to post their comments on the social media platform, which caused harm to the informant's, body , mind and reputation. Reference has been made to Section 415 IPC, which is as hereunder:-

> "**415.Cheating.**—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any

> person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

71. The WhatsApp messages and conversation can definitely be not relied upon at this stage to make any inference. At the cost of repetition, it may be stated that the petitioner admitted that the amount was not deposited, in the account of the informant or his family members. But the money was deposited in some other accounts. The argument is that even if the wife of the informant is not relative of TSRCM, it does not make out any offence.

72. Section 415 IPC is in two parts. First part deals with deceiving any person fraudulently and dishonestly, to deliver any property etc., and second part, deals with intentionally inducing a person so deceived to do or omit to do anything, which he would not do or omit, if he was not deceived and, which acts or omission causes or is likely to cause damage or harm to that person. The definition of Section 415 of the IPC refers to two persons namely, (i) the person, who makes inducement and (ii) the person, who is deceived. According to Section 415 IPC, the harm should be caused to the person, who is deceived. If harm is caused to some other person, who is not deceived, the provision of Section 415 IPC may not come into application.

73. On behalf of the petitioner, reliance has been placed in the judgment of **G.V. Rao Vs. L.H.V. Prasad and others, (2000) 3 SCC 693** and **Sheila Sebastian Vs. R. Jawaharaj and another, (2018) 7 SCC 581**. In the case of G.V. Rao (*supra*), the Hon'ble Supreme Court held as hereunder:

> **"6.** This part speaks of intentional deception which must be intended not only to induce the person deceived to do or omit to do something but also to cause damage or harm to that person in body, mind, reputation or property. The intentional deception presupposes the existence of a dominant motive of the person making the inducement. Such inducement should have led the person deceived or induced to do or omit to do anything which he would not have done or omitted to do if he were not

deceived. The further requirement is that such act or omission should have caused damage or harm to body, mind, reputation or property.

7. As mentioned above, Section 415 has two parts. While in the first part, the person must "dishonestly" or "fraudulently" induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. As observed by this Court in *Jaswantrai Manilal Akhaney* v. *State of Bombay*[3] a guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure conviction of a person for the offence of cheating, "*mens rea*" on the part of that person, must be established. It was also observed in *Mahadeo Prasad* v. *State of W.B.*[4] that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered."

74. In the case of Sheila Sebastian (*supra*), the Hon'ble Court, *inter-alia*, held that **"a charge of forgery cannot be imposed on a person, who is not the maker of the same"**. The Hon'ble Supreme Court interpreted the concept of cheating as to who may be considered to have been cheated. The Hon'ble Court held as hereunder:-

"23. The Court in *Mohd. Ibrahim*[5] observed that:-

"*16.* … There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted."

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[3] AIR 1956 SC 575 : 1956 Cri LJ 1116 : 1956 SCR 483
[4] AIR 1954 SC 724 : 1954 Cri LJ 1806
[5] (2009) 8 SCC 751 : (2009) 3 SCC (Cri) 929

75. In the case of **Babu Khan Vs. State, AIR 1961 Allahabad 639**, while considering the provision of Section 415 IPC, it was categorically held that an offence of Section 415 is complete only when the person, who has been cheated is also harmed. The Court held as hereunder:-

> "**6.** Damage or harm in body has been caused to Rajpal who was operated on; but by the definition quoted above it is necessary that the harm should be caused to the person deceived not to any on else, and in this case the person deceived was not Rajpal but Zalim. There remains however to be considered damage or harm in mind; and it seems to me that Zalim himself was harmed in mind by the act which he was induced to do on account of it the deception practised by the accused, for his permitting the operation to be performed on his son's eye must inevitably have caused him a good deal of mental anguish.
>
> "Damage or harm in mind" has not been defined in the Penal Code, but I presume that it covers both injury to the mental faculties and also mental pain (just the same as damage or harm in body would cover wounds or other hurts and also physical pain). To sum up, I am satisfied that the complainant Zalim was deceived by the accused and was thereby induced to do an act (allowing his son to be operated upon) which he would not have done if not so deceived; and that this act caused Zalim harm in mind in the mental anguish. It is clear therefore that all the ingredients of the offence of cheating, defined in Sec. 415, I.P.C., have been made out in the present case and that the accused's conviction under Sec. 419, I.P.C. suffers from no legal flaw."

76. In the instant case, what is being argued on behalf of the State is that the petitioner by making false statement cheated the public and subsequently, it caused harm to the informant. Complaint has been made by the informant. The informant was not cheated, therefore, offence under Section 415 IPC is not made out *qua*, the informant, even though, if he might have been harmed. It is so because he was not cheated. And to attract the offence of cheating, as defined under Section 415 IPC, the harm should be caused to the person, who was cheated. No member of public had complained that he was cheated by the petitioner by which, that person was harmed. Accordingly, even *prima-facie*, offence under Section 415 IPC is not made out.

77. FIR is also lodged under Sections 467, 468, 469, 471 and 120-B IPC.

78. It is argued on behalf of the State that the petitioner flashed certain bank deposit receipts, in the social media publication and narrated that the amount was deposited in the accounts of the informant and his family members, it means he forged receipts. Petitioner has filed certain WhatsApp chat allegedly made between Amratesh Singh Chauhan and TSRCM. It also contains some bank deposit receipts, but none of them is in the name of the informant. Arguments have been advanced on behalf of the State, regarding reliability of these WhatsApp messages. The petitioner admits that there is no receipt with regard to deposition of amount, in the account of the informant and he further admits that the amount was not deposited, in the account of the informant and his family members. During the course of argument, on behalf of the petitioner, it is argued that the receipts, which have been flashed in the social media publication pertain to the deposits made in the accounts of Rajni, RamuDhiman and RajenderKaushal. This Court cannot record any observation on this aspect.

79. What informant writes in his counter-affidavit is that since, the bank record reveals that no deposits were made, in his account;it means that the bank receipts/deposit slips have been forged by the petitioner. Petitioner has denied before this Court that any deposit was made in the account of the informant. Petitioner also denied of having any deposit slips, pertaining to the account of the informant. In the alleged WhatApp messages also there are no deposit receipts pertaining to the informant. On behalf of the State or the informant, it has even not been shown that there is any document, in the nature of bank deposit receipts pertaining to the account of the informant and his family members. Where is the question of forgery? There is no document. It is at the most a case of giving false statement, but it does not attract the provision of forgery as such. There is even no, *prima-facie*, case made out under Section 467, 468, 469 and 471.

80. Offence under Section 124-A IPC has also been added against the petitioner. In its, counter-affidavit State has justified it in para no. 4, (in

para wise reply) on the ground that once material came to light, which revealed that the petitioner was indulging in activities with the intent to create turmoil in the State of Uttarakhand by way of a sustained and dishonest campaign against the Government of Uttarakhand and his actions fall within the parameter of Section 124-A IPC, apart from other offences alleged against him. In the written argument, on behalf of State, on his point the following is stated.

> "6. **Section 124 A IPC:** It has emerged that the Petitioner is part of a larger conspiracy and malicious design against the Government of Uttarakhand with the intent to bring into hatred and contempt, and to excite disaffection against the Government of Uttarakhand as is revealed from materials which are part of investigation and recorded in the case diary. Therefore, Section 124-A of the IPC was added to the impugned FIR. Thus Section 124A was not been added merely on the statements made by the accused in his facebook video of 24.06.2020. However revealing every aspect of the investigation at this stage will jeopardize not only the course of investigation but also some witnesses. The Police will produce appropriate evidences before the courts of competent jurisdiction, during remand and trial.
>
> Had there been any iota of truth to the allegations leveled by the Petitioner, certainly Section 124A of the IPC could not be attracted. But once the inquiry revealed that the Petitioner made false allegations against the government on the basis of forged documents and thereafter exhorted the general public against the government on the basis of knowingly false accusations, the Petitioner cannot claim immunity from the consequences of his criminal actions in the garb of right to freedom of speech and expression.
>
> Even a perusal of the comments made by members of the general public on the facebook video of the Petitioner would reveal that the petitioner acted with the intent to incite hatred against the Government of Uttarakhand **Comments by general public on the FB video @ CA12 @ Pg.108 of Counter.**
>
> It is also pertinent to note that there are several FIRs lodged against the Petitioner in the State of West Bengal. The Petitioner is accused of various offences such as cheating, fraud, forgery, extortion, impersonation and corruption. Interestingly, in some of the FIRs registered against the Petitioner in the State of West Bengal, the Petitioner is similarly accused of fabrication of records, extortion, blackmail and attempting to lure public officials and politicians with an intent to blackmail. It is pertinent to note that all these FIRs are currently pending investigation and no stay has been granted with respect to the same. The Petitioner has filed Writ Petition before the Hon'ble Supreme Court in connection with these FIRs seeking interalia seeking transfer of investigation to CBI which is pending adjudication while investigation is continuing in the FIRs."

81. During argument, the Court requested learned Senior Counsel for the State to explain as to how offence under Section 124-A IPC is made

out. The reply given was that "it is a matter for investigation". If, *prima-facie*, case is made out, without any scrutiny, definitely the matter should be left for investigation, but if, *prima-facie*, case is not made out, in such cases, in the proceeding like instant one, interference is definitely warranted. This is what the scope of Article 226 of the Constitution of India is. The allegations against the petitioner are two folds that he gave false statement that any amount was deposited, in the account of the informant and his family members etc., and he gave another false statement that the wife of the informant is the real elder sister of the wife of TSRCM. How can these allegations attract the provision of Section 124-A IPC? Even if it is alleged that the Chief Minister has taken bribe, how is Section 124-A IPC attracted? On behalf of the petitioner, it is argued that the offence under Section 124-A IPC is not even remotely made out. Reference has been made to the judgment in the case of **KedarNath Singh Vs. State of Bihar, AIR 1962 SC 955**.

82. Any interpretation of Section 124-A IPC would take this Court deep down in the lane of history. This Court would try to avoid deeper discussion, but some references to its origin and its journey is necessary to appreciate the instant controversy. It is the State, in the instant case, which is prosecuting the petitioner, on the basis of information given by the informant. It is the State that added Section 124-A IPC. Section 124-A IPC is as hereunder:-

> **"124-A. Sedition.—**Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.
>
> ***Explanation 1.*—**The expression "disaffection" includes disloyalty and all feelings of enmity.
>
> ***Explanation 2.*—**Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.
>
> ***Explanation 3.*—**Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section."

83. There are many heavy words like 'hatred', 'contempt', 'incites', 'disaffection' used in Section 124-A IPC. It defines as well as punishes, the actions given thereunder. The heading of this section is "Sedition". The word as such is not used in the section. A provision, which was not in the initial Indian Penal Code, 1860 and added subsequently, in the year 1870. It is said that the draft Indian Penal Code had this provision, but it could not be added due to mistake. In the year 1870, India was not independent, it was being governed by the Crown through Secretary of State. Indians did not have any say in the governance at that point of time. They were not part of decision making process. At that point of time, we were not governing ourselves. We were governed by outsiders. No voice in governance. Today, India, a sovereign country, is a democratic republic.

84. In the case of **State (NCT of Delhi) Vs. Union of India and another, (2018) 8 SCC 501**, the concept of democratic India has been widely discussed. Its governance, its component and its constitutional philosophy is interpreted. The Court held in para no. 305.1 that **"the first is that as a political document, the Constitution is an expression of the sovereignty of the people**". Now, people are sovereign. It is the people, who rule themselves, through their elected representatives. The people of India have a say in its governance. The people of India have an interest, in the governance of the country. They participate in the governance. The sovereignty lies with the people. Constitution is an expression of it.

85. The Constitution of India gives freedom of expression to each one with reasonable restrictions as given under Article 19 of the Constitution. Long back, when Bal Gangadhar Tilak was being prosecuted for sedition, he stood and said **"the law may be rigid; the law may be harsh. Stand between me and the law and protect me because I represent the liberty of the press."**[6]Mahatma Gandhi when tried for the charges under Section 124-A IPC before Mr. C. N. Broomfield, I. C. S., District and

[6] Emperor v. Bal Gangadhar Tilak, 1908 SCC OnLine Bom 48 : (1908) 8 Cri LJ 281

Sessions Judge, Ahmedabad, hadon 18.03.1922 said **"In my opinion, the administration of the law is thus prostituted, consciously or unconsciously, for the benefit of the exploiter……Section 124 A, under which I am happily charged, is perhaps the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by law. If one has no affection for a person or system, one should be free to give the fullest expression to his disaffection, so long as he does not contemplate, promote, or incite to violence……."**

86. In the Constituent Assembly, when freedom of expression was being discussed, the Assembly was unanimous in having the word sedition deleted from the draft Constitution. During the discussions, Shri. M. Ananthasayanam Ayyangar on 02.12.1948 said[7]:-

> "Regarding freedom of speech we have improved upon the restriction that has been imposed in clause (2). The word sedition has been removed. If we find that the government for the time being has a knack of entrenching itself, however had its administration might be it **must be the fundamental right of every citizen in the country to overthrow that government without violence, by persuading the people, by exposing its faults in the administration, its method of working and so on**. The word `sedition' has become obnoxious in the previous regime. We had therefore approved of the amendment that the word `sedition' ought to be removed, except in cases where the entire state itself is sought to be overthrown or undermined by force or otherwise, leading to public disorder; but any attack on the government itself ought not to be made an offence under the law. We have gained that freedom and we have ensured that no government could possibly entrench itself, unless the speeches lead to an overthrow of the State altogether."
>
> (emphasis supplied)

87. When the constitutional validity of Section 124-A was examined, in the case of Kedar Nath Singh (*supra*), the Hon'ble Supreme Court observed "**any law, which is enacted in the interest of public order may be saved from the voice of constitutional invalidity. If on the other hand, we were to hold that it is well settled that if certain provision of law constitute in one way would make them consistent with the constitution, an another interpretation would render them**

[7] https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-12-02

unconstitutional, the Court would lean in favour of the former construction. The provision of the sections read as a whole along with explanations, make it reasonably clear that the sections aims at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence. As already pointed out, the explanations appended to the main body of section makes it clear that **criticism of public measures or comment on government action, however strongly worded would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression.**

(emphasis supplied)

88. The above law as laid down by the Hon'ble Supreme Court, in the case of Kedar Nath Singh (*supra*) categorically lays it down that unless, the activities tends to create disorder or disturbance of public peace or by resort to violence, it is not an offence.

89. Levelling false allegations against a person can never be sedition, unless, it qualifies the test laid down in the case of Kedar Nath Singh (*supra*). If allegations are levelled against the representatives, it alone cannot be sedition. Criticizing the government can never be sedition. Unless the public functionaries are criticized, democracy cannot be strengthened. In democracy dissent is always respected and considered, if it is suppressed under sedition laws perhaps, it would be an attempt to make the democracy weak. Adding Section 124-A IPC in the instant case manifests that it has been an attempt of the State, to muzzle the voice of criticism, to muffle complaint/ dissent. It can never be allowed. The law does not permit it. In the instant case, whatever the allegations against the petitioner, they do not remotely connect with Section 124-A IPC. Offence under Section 124-A IPC is not, *prima-facie*, made out. Why this section is added, it's beyond comprehension. Whatever is stated on behalf of the State, on this aspect, has no merit at all.

90. The FIR in the instant case is under Section 120-B IPC also, but there is no material even to show what criminal conspiracy was done,

there is no material to exhibit it. *Prima-facie*, no offence under Section 120-B IPC is made out.

91. In view of the foregoing discussion, this Court is of the view that even if the allegations made in the first information report are taken at their face value and accepted in their entirety, do not, *prima-facie*, constitute any offence or make out a case against the petitioners. Therefore, on this ground alone, the FIR in the instant case is liable to be quashed.

PROCEDURE ADOPTED ON COMMUNICATION DATED 07.07.2020

92. Whether the procedure adopted on communication dated 07.07.2020 was in accordance with law. Admittedly, a text dated 07.07.2020 was addressed to the DIG Police by the informant and it was given on 09.07.2020. A copy of this communication was marked to Personal Secretary, Chief Minister. On 15.07.2020, the informant gave a letter to the in-charge, Police Station Nehru Colony requesting that inquiry be conducted by a Gazetted Officer. On 19.07.2020, DIG Dehradun appoints CO to conduct inquiry. On 30.07.2020, a report was prepared by the CO. On 31.07.2020, the informant seeks a copy of the inquiry report through RTI and lodged FIR on the same day. The argument on behalf of the petitioner is that this is procedure not known to law.

93. On behalf of the State, what is argued is that the communication dated 07.07.2020 was not revealing any cognizable case, therefore, inquiry was made in view of the law laid down in the case of LalitaKumari (*supra*).

94. It is also argued that since, in the communication dated 07.07.2020 reference was made to the Chief Minister with regard to corruption, out of abundant precaution, preliminary inquiry was conducted and it does not prejudice anyone.

95. Reference has been made to the judgment in the case of Tapan Kumar Singh (*supra*). In the case of LalitaKumari (*supra*) the question before Hon'ble Supreme Court was that: Whether under Section 154 CrPC, a Police Officer is bound to register an FIR, when a cognizable offence is made out or he (police officer) has an option, discretion or latitude of conducting some kind of preliminary inquiry before registering an FIR. The Hon'ble Supreme Court widely discussed the issue and in para no. 72 of the judgment held that **"it is unequivocally clear that the registration of FIR is mandatory."** In para no. 79 of its judgment, the Hon'ble Court held **"that the reasonableness or credibility of the information is not a condition precedent for the registration of a case."** With regard to preliminary inquiry, the Hon'ble Court held as hereunder:-

> "**85.** The maxim *expression unius est exclusion alterius* (expression of one thing is the exclusion of another) applies in the interpretation of Section 154 of the Code, where the mandate of recording the information in writing excludes the possibility of not recording an information of commission of a cognizable crime in the special register.
>
> **86.** Therefore, conducting an investigation into an offence after registration of FIR under Section 154 of the Code is the "procedure established by law" and, thus, is in conformity with Article 21 of the Constitution. Accordingly, the right of the accused under Article 21 of the Constitution is protected if the FIR is registered first and then the investigation is conducted in accordance with the provisions of law."

96. And further, the Hon'ble Supreme Court also carved out certain exceptions of the cases, in which, preliminary inquiry may be required, owing to change in genesis and novelty of crimes with the passage of time. In para nos. 115 and 116 the exception was accepted to the cases of medical negligence and in para no. 117 exception was also made in the context of offense relating to corruption. The conclusions have been drawn in para no. 120 of the judgment. Para 120.1 lays down the law as hereunder:-

> **"120.1.** The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation."

97. Para no. 120.2 makes provision, if cognizable offence is not made out and preliminary inquiry may be conducted, which is as hereunder:

> **"120.2.** If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not."

98. Para no. 120.6 makes exception of the cases, in which, preliminary inquiry may be conducted, which is as hereunder:-

> **"120.6.** As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:
>
> (*a*) Matrimonial disputes/family disputes
>
> (*b*) Commercial offences
>
> (*c*) Medical negligence cases
>
> (*d*) Corruption cases
>
> (*e*) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.
>
> The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry."

99. The judgment in the case of Lalita Kumari (*supra*)lays down that information relating to cognizable offence has to be lodged as an FIR. But, if information does not disclose cognizable offence, a preliminary inquiry is permissible to ascertain, whether cognizable offence is disclosed or not. After it, in the case of Lalita Kumari *(supra)* exceptions have been drawn including in the cases of medical negligence and corruption. Reference has been made to the judgment in the case of **P. Sirajuddin Vs. State of Madras, (1970) 1 SCC 595**, which required the need for preliminary inquiry, before proceeding against public servant. In the case of P. Sirajuddin (*supra*), the Hon'ble Court in para no.17 held that **"before a public servant, whatever be his status is publicly charged with acts of dishonesty, which amounts to serious misdemeanor or misconduct of the type alleged in this case and a first information report is lodged against him,there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person, especially one who like the appellant occupy the top position in a department, even if baseless would do incalculable harm not only to the officer in particular, but**

to the department he belong to in general." This has been approved in the case of Lalita Kumari (*supra*). In view of this, it can be concluded that the direction in para no. 120.6, in the case of Lalita Kumari (*supra*) are exceptions to the general rule laid down in the case that registration of FIR is mandatory under Section 154 of the Code.

100. The question to be examined in the instant case is whether, the instant case falls under the exceptions as given in the case of Lalita Kumari (*supra*) (in paras 120.2 or 120.6), which warrants preliminary inquiry.

101. The communication dated 07.07.2020 of the informant was not registered as an FIR. State in para no.6 (in general submission) of its counter-affidavit has stated that the informant did not seek registration of FIR by his communication dated 07.07.2020. He did not seek any other action against the petitioner.

102. Now the question is that if according to the State, the communication dated 07.07.2020 was not for lodging of an FIR and it was not disclosing any cognizable offence then this information may not be termed as an information under Section 154 of the Code and in that case neither FIR could have been lodged nor preliminary inquiry conducted.

103. The facts speak otherwise. The communication dated 07.07.2020 of the informant levels two allegations with proof. The informant had given the bank certificates to show that amount as alleged by the petitioner, was not deposited in his accounts and he has stated that his wife is not relative of TSRCM. After inquiry, these facts have been further reaffirmed by the Police. Therefore, to say that the communication dated 07.07.2020 did not disclose commission of cognizable offence, therefore, inquiry was conducted, has no force because the FIR also speaks of the same allegations, which were levelled in communication dated 07.07.2020. The only one additional document collected by the inquiry officer was

succession certificate of the wife of the informant, which was given to her by the informant himself, during the alleged preliminary inquiry.

104. What was the nature of the communication dated 07.07.2020 made by the informant? **In para no. 6 (in general submission) of the counter-affidavit the State says that the informant, "while denying the allegations leveled against him publicly by the petitioner, merely requested for an enquiry, in order to demonstrate the falseness of the allegations being levelled against him and certain others by the petitioners".** How can a person, ask Police, to conduct an inquiry so as to demonstrate the falseness of the allegations? A person may approach the Police for lodging of an FIR or taking other legal action. Whether the informant wanted to collect evidence, but he was not required to do so because he himself had given bank certificates alongwith communication dated 07.07.2020 and it is he himself, who during alleged preliminary inquiry gave succession certificate of his wife. Then what was the need of this demonstrating the falseness? It is not information under Section 154 of the Code. The procedure adopted on the communication dated 07.07.2020 is unknown to law. How Police can be asked to just demonstrate the falseness of allegation?

105. It is also argued that since allegations were relating to bribe and Chief Minister was referred to, hence out of abundant caution preliminary inquiry was conducted. Had this statement been true, perhaps preliminary inquiry would have been permissible in view of the judgment in the case of Lalita Kumari (*supra*) (para no. 120.6), but unfortunately, it is also not true for the following reasons:-

> **105.1.**The inquiry, which was conducted subsequent to communication dated 07.07.2020 was restricted to only two things namely, (i) the bank records of the informant to ascertain as to whether any amount was deposited in his bank account (although with his communication dated 07.07.2020, the informant had himself given those bank certificates) and

further to ascertain the relationship between the informant and TSRCM.

105.2. In the social media publication, there were many other allegations, there were WhatsApp messages exchanged allegedly between TSRCM and Amratesh Singh Chauhan. The Inquiry Officer did not examine those issues. He did not examine the credibility, veracity or genuineness of the WhatsApp messages or the telephonic conversation allegedly made between Amratesh Singh Chauhan and Rajesh Sharma as also between media advisers to TSRCM and Amratesh Singh Chauhan.

105.3. Had corruption been the focal issue of the alleged preliminary inquiry;perhaps, it was permissible but that aspect was not at all examined by the Inquiry Officer. The Inquiry Officer did not look into the other bank accounts; did not look into the bank deposit receipts, which the petitioner allegedly waved or flashed in his social media publications, which were part of alleged WhatsApp messages.

106. Therefore, this argument can also be not accepted that because corruption was an issue, therefore, preliminary inquiry was conducted. Corruption was not at all the focal point for the alleged preliminary inquiry. The procedure adopted on the communicated dated 07.07.2020 is not in accordance with law.

107. Which one is the FIR? On behalf of the petitioner, it is submitted that the instant FIR is nothing, but a statement under Section 162 of the Code. In support of his contention, learned counsel for the petitioner referred to the judgment in the case of **State of Andhra Pradesh Vs. Punati Ramulu and others, 1994 Supp (1) SCC 590**and the **State of Bombay Vs. Rusy Mistry, AIR 1960 SC 391**.

108. In the case of Punati Ramulu (*supra*), the Court found a report, which was prepared, after inspection of the spot by the Police Officer not

genuine and reliable. In the case of Rusy Mistry (*supra*), the Hon'ble Supreme Court in para no.23 of the judgment held that "**information given subsequent to first information report is hit by Section 161 and 162 of the Code.**"

109. Basic contents of the communication dated 07.07.2020 and the instant FIR, are one and the same. The communication dated 07.07.2020 was also with proof. FIR in the instant case was filed, after further proof by the Inquiry Officer. In the case of Tapan Kumar Singh (*supra*), the Hon'ble Supreme Court in para no. 23 of the judgment held that **"where two information are recorded and it is contended before the Court that the one projected by the prosecution as the FIR is not really the FIR, but some other information recorded earlier is the FIR, that is a matter, which the Court trying the accused has jurisdiction to decide."** In the instant case also this Court does not intend to proceed further to hold as to which of the communications should be treated as an FIR, either communication dated 07.07.2020 or the instant FIR. If this matter survives, perhaps the trial court, if such occasion arises may have an opportunity to examine and scrutinize this aspect. This Court leaves it at it.

MALAFIDE

110. On behalf of the petitioner, it is argued that entire process, right from the beginning is malicious. It is a *malafide* prosecution launched against the petitioner.

111. Literal meaning of *malafide*is"bad faith or intention etc." It is the state of mind, which prompts someone to act. Reading of mind is one of the toughest exercises, but attending factors helps the Court to infer the intention. In the case of **Gulam Mustafa and others Vs. State of Maharashtra and others, (1976) 1 SCC 800**, the Hon'ble Supreme Court observed **"the charge of *malafide* against public bodies and authorities is more easily made then made out. It is the last refuse of a losing litigant**."

112. In the case of P.P. Sharma (supra), the Hon'ble Supreme Court held that "**the question of *mala-fide* exercise of power assumes significance only when the criminal prosecution is initiated on extraneous considerations and for an unauthorized purpose**". It was further observed that "**there is no material to show that the dominant object of registering the case was the character assassination of the respondents or to harass and humiliate them.This Court in State of Bihar Vs. J.A.C. Saldhana[8] has held that when the information is lodged at the police station and an offence is registered, the *mala-fides* of the informant would be of secondary importance.It is the material collected during the investigation which decides the fate of the accused person**".

113. The concept of *mala-fide* has further been discussed by the Hon'ble Supreme Court in the case of P.P. Sharma (*supra)* and it was held that;

> "49. The focal point from the above background is whether the charge-sheets are vitiated by the alleged mala fides on the part of either of the complainant R.K. Singh or the Investigating Officer G.N.Sharma. In *Judicial Review of Administrative Action* by S.A. de Smith, (3rd edn. at p.293[9] stated that:
>
> > "The concept of bad faith … in relation to the exercise of statutory powers … comprise dishonesty (or fraud) and malice. A power is exercised fraudulently if its repository intends to achieve an object other than that for which he believes the power to have been conferred. His intention may be to promote another public interest or private interest. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise….The administrative discretion means power of being administratively discreet. It implies authority to do an act or to decide a matter a discretion…….."
>
> "50. Mala fides means want of good faith, person bias, grudge, oblique or improper motive or ulterior purpose……....."
>
> "51. The action taken must, therefore, be proved to have been made mala fide for such considerations Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been

[8] (1980) 1 SCC 554
[9] **Ed.:** 4th Edn., p.335

taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand."

114. In the case of **State of Karnataka Vs. M. Devendrappa and Another, (2002) 3 SCC 89**, the Hon'ble Court held as hereunder:-

"6. ……All Courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "*quande lex aliquid aliqui concedit, concedere videtur in sine que ipsa, esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the Section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. It is to be exercised *ex-debito justitiae* to do real and substantial justice for the administration of which alone Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. **It would be an abuse of process of Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers Court would be justified to quash any proceeding if it finds initiation/continuance of it amounts to abuse of process of Court or quashing of these proceedings would otherwise serve the ends of justice**……" (emphasis supplied)

115. In the case of M. Devendrappa (supra), the Hon'ble Court, inter-alia, held that "**Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of private complainant as unleash vendetta to harass any person needlessly.**"

116. In the case of**Chandrapal Singh and Others Vs. Maharaj Singh and Another, (1982) 1 SCC 466**, Hon'ble Court, inter-alia, observed that**"The learned Counsel for the respondent told us that a tendency to perjure is very much on the increase and unless by firm action courts do not put their foot down heavily upon such persons the whole judicial process would come to ridicule. We see some force in the submission but it is equally true that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court."**

117. In the case of **State of Karnataka Vs. Muniswamy and Others, (1977) 2 SCC 699**, Hon'ble Supreme Court held as hereunder:-

> "7. ……..The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court **proceeding ought not to be permitted to degenerate into weapon of harassment or persecution. In a criminal case**, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. **The ends of justice are higher than the, ends of mere law though justice has got to be** administered according to laws made by the, legislature. The compelling necessity for making these observations is that without a proper realization of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."
>
> (emphasissupplied)

118. In the case of **State of Punjab v. V.K. Khanna, AIR 2001 343**, Hon'ble Supreme Court had occasion to interpret the concept of *mala-fide*. The Court held as hereunder:-

> "25……..The expression 'malafide' has a definite significance in the legal phraseology and the same cannot possibly emanate out of fanciful imagination or even apprehensions but there must be existing definite evidence of bias and actions which cannot be attributed to be otherwise bonafide - actions not otherwise bonafide, however, by themselves would not amount to be malafide unless the same is inaccompaniment with some other factors which would depict a bad motive or intent on the part of the doer of the act."

119. In the case of **Vineet Kumar and others Vs. State of Uttar Pradesh and another, (2017) 13 SCC 369**,there were financial transactions between the parties and a complaint under Section 138 of The Negotiable Instruments Act, 1882 (for short "the NI Act") was pending. During this period, the other party lodged a criminal case for rape, which ended in submission of final report, but on protest petition, the accused were summoned. In that case also, arguments were advanced that the criminal proceedings for rape was *mala-fide* and falsely initiated to save the complainant and his family members for the offence under Section 138 of the NI Act. The proceedings were quashed in that case. The Court observed as hereunder:-

> "41. ……In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in *State of Haryana* v. *Bhajan Lal*[10]. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When **there are materials to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in *State of Haryana* v. *Bhajan Lal*[11] , which is to the following effect**: (SCC p. 379, para 102)
>
> "*102*. (*7*) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."
>
> Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of *State of Haryana* v. *Bhajan Lal*[12] , but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings."
>
> (emphasis supplied)

120. The base rule, as stated hereinbefore is that in the proceedings under Article 226 of the Constitution of India, like the instant one, a legitimate

[10] State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426
[11] State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426
[12] State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426

prosecution should not be thwarted. But, in case of any *malafide* interference is absolutely warranted.

121. In the instant case, according to the petitioners, the allegations were not levelled by him for the first time in the social media publication. It is his categorical version that when Amratesh Singh Chauhan did not get what was promised to him, he revealed these facts to Rajesh Sharma, a Journalist and it is Rajesh Sharma, who revealed all these things to the petitioner. In the year 2019, the petitioner held a press conference and stated all these things. The same matter was discussed in the Legislative Assembly of the State. Not only this, a web portal "*TeesriAnkh Ka Tehelka*" published this story and the informant complained against it in the Press Council of India. Subsequently, the informant appeared in the interview with "*TeesriAnkh Ka Tehelka*" and denied the allegations.

122. The petitioner in WPCRL No.2113 of 2018, which was filed against FIR No. 100 of 2018, in his rejoinder affidavit disclosed all these facts, which forms basis of the social media publication. The State knew it. In a nutshell, according to the petitioner, whatever was stated in the social media publication was within the knowledge of State as well as the informant much earlier in the year 2019. Insofar as, rejoinder affidavit inWPCRL No.2113 of 2018 is concerned, definitely petitioner raised all these issues in the year 2019.

123. Then the question is why FIR was filed in the instant case?The question does not stop here, it is little deeper. The informant gives a communication on 07.07.2020 to the Police, which according to the counter affidavit of the State was given to demonstrate the falseness of the allegations levelled by the petitioner. The Police was asked to demonstrate something. This Court has held that this is an unknown procedure in the Code. But, Police took this task. The informant also marked a copy of his communication dated 07.07.2020 to the Chief Minister. The petitioner had worked with TSRCM earlier in the capacity of an Advisor. They were not unknown. The allegations were touching

upon TSRCM. Therefore, marking of the communication dated 07.07.2020 to the Chief Minister, on the face of it, does not make any difference. It does not attribute any intention, May be to inform the Chief Minister that this has happened again or may to seek any assistance, it was also marked to him. But this Court leaves it at here.

124. What happened thereafter, further reflects the intentions. It appears that on the communication dated 07.07.2020 of the informant, Police started inquiring the matter. But, on 15.07.2020, the informant requested the Police that his matter be inquired by some Gazzetted Police Officer. This communication has been filed by the informant as annexure 2 to his counter affidavit dated 10.09.2020. Who is the informant to ask officer of a particular level to demonstrate false allegations allegedly levelled by the petitioner? State has also alongwith additional affidavit dated 19.09.2020 filed these documents as Annexure 1. When on 15.07.2020, the informant requested inquiry from the Gazzetted Officer, SI Neema Rawat of the Police Station Nehru Colony, requested Senior Superintendent of Police that the inquiry may be conducted by the Gazzetted Officer. This letter is also part of Annexure 1 of the additional affidavit dated 19.09.2020,filed by the State. On it, the DIG of Police, on 19.07.2020 directed CO to inquire the matter and submit the report by 20.07.2020.

125. Three things happened. According to the State, the informant by way of his communication dated 07.07.2020 did not require lodging of an FIR and as per counter affidavit, of the State, the informant wanted to demonstrate the falseness of the allegationslevelled by the petitioner. The Police undertook it. The informant writes on 15.07.2020 that inquiry be conducted by some Gazzetted Officer. Police accepts it and DIG on 19.07.2020, required CO to conduct the inquiry and submit the report with utmost haste on 20.07.2020. The fact remains, it was not submitted on that date. The inquiry report was prepared on 30.07.2020 and under an RTI, it was given to the informant on 31.07.2020. On the same day in the evening, FIR was lodged. This Court does not want to discuss much about this story now. The fact remains State was acting with utmost speed. It

may be done, but change of Inquiry Officer at the request of informant and the sincerity with which it was acknowledged by the DIG and sought report a day thereafter reflects intention. Is it *malafide*?

126. Alongwith additional affidavit dated 19.09.2020, the State filed the documents related to RTI application, which is annexure 4. In fact, this is with regard to a query raised by the Court that as to how a report, which was prepared on 30.07.2020 was given with utmost speed on 31.07.2020 so that FIR may be lodged on the same date. This Annexure 4 has not been discussed during the arguments. But, according to it, application for information was given by the informant and information was supplied on 31.07.2020. Total nine pages were given and Rs.10/- fee was collected. Apparently, this fee does not look appropriate. Perhaps nobody looked into that aspect because according to Section 6 of the RTI Act, fee is to be deposited alongwith the application for information and the Uttarakhand Right to Information Rules, 2013 ("the Rules") provides further procedure to it. According to Rule 6, Rs.10/- fee is to be paid alongwith the application for RTI, but additional fee is also required in accordance with the pages as given in the proviso to Rule 6, which is Rs.2/- per page. Rule 7 gives a procedure that within a weekfrom the receipt of the application, the requirement of additional fee should be communicated to the applicant.

127. In the instant case, the report was prepared by CO on 30.07.2020. The report was to be given to DIG, because it is pursuant to his order that the report was submitted, the application for information under RTI was given to the Senior Superintendent of Police, Dehradun on 28.07.2020 and the information was furnished by CO. The document travelled at agreat speed. If 9 pages were to be given, as per Rules 6 and 7 of the Rules, the fee should have been little higher, but it was also not claimed by the State.

128. The same day FIR was filed and the same day arrest was made of one accused, according to the petitioner, at 11:00 in the midnight without

following any procedure. The fact remains that arrest in the case was made in midnight at 11:00. This speed and these facts coupled with the facts that the allegations levelled in the FIR were within the notice of the State as well as the informant much earlier in the year 2019, definitely smells *malafide.* The *malafide*is reflected in submitting application on 09.07.2020 in order to demonstrate falseness and the *malafide*is further reflected in the actions taken thereafter.

129. Repeatedly, it is argued that post lodging of the FIR during investigation, the petitioner did not cooperate. While on behalf of the petitioner, it is argued that petitioner cooperated at each stage of the investigation; he replied to each communication and the statement of the State that the petitioner did not cooperate in itself is *malafide.* Various documents have been referred to on this point. In fact, in the written statement, State has given the details of the communication made by the IO to the informant.

130. The first communication of the IO is dated 10.08.2020, which is annexure 3 to the counter affidavit. It has been replied by the petitioner on 11.08.2020 and this communication has been filed by the State at annexure 4 to the counter affidavit. By this communication dated 11.08.2020, the petitioner wanted a copy of the complaint on which the inquiry was being conducted. There appears to be nothing wrong. The IO would have immediately told the petitioner as to why his presence is required, which matter was being inquired into by him. But, another communication was sent by the IO on 12.08.2020 requiring the petitioner to substantiate claim made by him in the social media publication. On 17.08.2020, the petitioner gave a long reply to the IO, which is annexure 6 to the counter affidavit of the State. Each and every detail is given in it.

131. Again when on 21.08.2020, the IO required the petitioner to submit the original document. Again the same reply, which had already been given by the petitioner on 17.08.2020, was given to the IO by the petitioner on 26.08.2020. The reply dated 17.08.2020, annexure 6 to the counter affidavit of the State, has been discussed during the course of

arguments. In fact, it is categorical reply to the queries made by the IO. The details of Whatsapp messages and in para 2, the petitioner states that these information were given by Amratesh Singh Chauhan to Rajesh Sharma through Whatsapp and Amratesh Singh Chauhan advised them that the informant is brother in law of TSRCM. The Whatsapp messages, telephone conversation, everything was provided by the petitioner to the IO and in his communication dated 17.08.2020, the petitioner further reiterated that everything was filed by him in WPCRL No.2113 of 2018. This cannot be said to be non-cooperation by the petitioner.

132. On behalf of the State, it is argued that the petitioner shared irrelevant and inconsequential documents in reply to the notices given by the IO. The replies which were given, on 11.08.2020, 17.08.2020 and 26.08.2020 by the petitioner to the IO, cannot be said to be irrelevant and inconsequential. It is true that in the instant FIR, two issues were raised that is deposition of money and relationship. But, the petitioner raised various issues with regard to corruption, with regard to payment made at the instance of TSRCM in various bank accounts. The Whatsapp messages were given. Even telephonic conversations were given to IO. The inquiry report of CO did not touch upon them. In fact, the inquiry report did not touch those bank deposit receipts which were apparently legible in the Whatsapp messages, shown in the social media publication. Why did the State closeits eyes for these facts? May be they were not the sole consideration in the instant FIR, but their consideration was important. Therefore, it cannot be said that the petitioner did not reply and did not cooperate during investigation. The petitioner cooperated and definitely, to say that the petitioner did not cooperate does also smell*malafide*, on the part of State.

133. Having considered the rival submissions, this Court is of the view that in fact, the communication dated 07.07.2020 and subsequent lodging of the FIR and other actions are actuated by *malafide* and on this ground alone the instant FIR deserves to be quashed.

FURTHER ISSUES

134. This Court has considered that no *prima facie* case is made out in this case against the petitioner and the action of the State is *malafide*. The FIR in the instant case is liable to be quashed. But should the Court stop here?

135. In FIR No. 100 of 2018, the first informant had alleged that he was pressurized to conduct sting operation by the petitioner and he was upset. Petitioner has categorically stated in WPCRL No.2113 of 2018 that in fact, the first informant had conducted various sting operations not of the relatives and close aids of TSRCM, but in fact, when he visited the office of TSRCM on 05.05.2018, he recorded the conversation. The petitioner filed those documents in WPCRL No.2113 of 2018. The IO in FIR 100 of 2018, records about the press conference, about the sting operation, which was shown at the press conference by the petitioner on 28. 01.2019 and also about WPCRL No.2118 of 2018, in the charge sheet. But strangely, it was not investigated by the IO in FIR No. 100 of 2018. What amused most is that IO made reference to the judgment in the case of **Rajat Prasad Vs. CBI (2014) 6 SCC 495**, by the Hon'ble Supreme Court. He knew about the law, but did not examine the sting operation. In the case of Rajat Prasad *(supra)*, in fact, the person who conducted the sting operation and offered bribe money was also an accused. Here according to the petitioner, the first informant, while conducting sting offered money to various persons, this aspect was never examined, it was left. But, petitioner was made an accused,who got the sting conducted. But, all these issues are related to FIR No. 100 of 2018, which are now pending consideration in WPCRL No.2113 of 2018 and in that writ petition various reliefs have been claimed by the petitioner including an inquiry into the sting conducted by the first informant. The same prayer was re-agitated in his rejoinder affidavit filed in WPCRL No.2113 of 2018. Therefore, this Court restrains to make any observation in respect of thesting conducted by the first informant.

136. In the instant case also, in the social media publication, the petitioner has levelled allegations of corruption against TSRCM. Of course, he levelled allegations that amount was deposited in the accounts of the informant and his relatives as bribe to TSRCM, which the petitioner admits is not true. But, there were other accounts. There are deposit slips which are legible, they have not been examined. Is the claim made by the petitioner with regard to deposition of money in various accounts allegedly given by TSRCM to Amratesh Singh Chauhan true? Nobody has examined it.

137. According to the State, when the petitioner levelled the allegations in the social media publication, on the social media platform, people reacted much badly, which harmed the informant. These reactions are filed alongwith annexure 12 to the counter affidavit filed by the State.According to the State, these comments made by members of general public, on social media platform, reveal that the petitioner acted with the intent to incite hatred against the Government of Uttarakhand. Bare perusal of these comments reveals that those who made comment were much unhappy with the state of affairs. They wanted that corrupt politicians should be removed. They commented that the rights of people have been divested. Have the people accepted that the allegations levelled by the petitioner are true? If it is so, it would be one of the worst day in the history of constitutional governance of the country, where rule of law prevails. People should not live under the impression that their representatives are not pure. If somebody levels false allegations which are actionable in law, the law should take its own course. If allegations of corruption levelled against the people in high positions stay in society without them being inquired and cleared, it will neither help the society to grow nor the State to function efficiently.

138. Corruption is not something new. In the case of **Manoj Narula Vs. Union of India, (2014) 9 SCC 1**, the Hon'ble Supreme Court observed that **"A democratic polity as understood in the quintessential purity, is conceptually abhorrent to corruption and, especially corruption at**

high places, and repulsive to the idea of criminalization of politics as it corrodes the legitimacy of the collective ethos, frustrates the hopes and aspirations of the citizens and has the potentiality to obstruct, if not derail, the rule of law. Democracy, which has been best defined as the government of people, by the people and for the people, expects prevalence of genuine orderliness, positive propriety, dedicated discipline and sanguine sanctity by constant affirmance of constitutional morality which is the pillar stone of good governance……". And further the Hon'ble Court observed as hereunder:-

> "16. Criminality and corruption go hand in hand. From the date the Constitution was adopted i.e. 26-1-1950, a Red Letter Day in the history of India, the nation stood as a silent witness to corruption at high places. Corruption erodes the fundamental tenets of the rule of law. In Niranjan Hemchandra Sahittal v. State of Maharashtra[13] the Court has observed: (SCC pp 654-655, para 26)
>
> "26. It can be stated without any fear of contradiction that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. It is worth noting that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered. The only redeeming fact is that collective sensibility respects such suffering as it is in consonance with the constitutional morality."

139. In the case of Bhajan lal (*supra)*, on corruption the Hon'ble Court observed as hereunder: -

> "**8.** Though the historical background and targets of corruption are reviewed time after time, the definitional and conceptual problems are explored and the voluminous causes and consequences of corruption are constantly debated throughout the globe, yet the evils of corruption and their auto-narcotic effect pose a great threat to the welfare of society and continue to grow in menacing proportion. Therefore, the canker of the venality, if not fought against on all fronts and at all levels, checked and eradicated, will destabilize and debilitate the very foundations of democracy; wear away the rule of law through moral decay and make the entire administration ineffective and dysfunctional.
>
> **9.** Mere rhetorical preaching of apostolic sermons listing out the evils of corruption and raising slogans with catch words are of no use in the absence of practical and effective steps to eradicate them; because '*evil tolerated is evil propagated*'."

[13] (2013) 4 SCC 642: (2013) 2 SCC (Cri) 737 : (2013) 2 SCC (L&S) 187

140. In the instant case, the petitioner has levelled allegations of corruption against TSRCM. He has given Whatsapp messages, recorded conversations, bank deposit receipts and also levelled allegations that certain land was given to Amratesh Singh Chauhan, but these issues were never examined.

141. Corruption is such a menace which has penetrated in every realm of life. It appears as if the society has normalised it. The folk songs reflect the perception of people. Living in Uttarakhand, the folk songs (written and sung by *Narendra Singh Negi*) reflect as if corruption is a way of life. Extracts of two of such songs are as below:

> **1.***"Machhu paani peendu ni dikhe*
>
> *Panchhi daala swendi ni dikhe*
>
> *Lendu chhe chha bhaiji ghoos sabhi jaan dan*
>
> *Lendu chhe chha bhaiji ghoos sabhi jaan dan*
>
> *Par keku lendu ni dikhend.……..…*
>
> *…….."*[14]
>
> Transalation:
>
> **Nobody ever sees a fish drinking water or a bird sleeping on the branch of a tree. Everybody knows that our officer brother takes bribes, but nobody ever saw him taking it……..**
>
> **2.***"Commission ki meat bhaat, rishwat ko relon*
>
> *Commission ki meat bhaat, rishwat ko relon*
>
> *Rishwat ko relon re*
>
> *Bas kar be!! Bindi na sapod ab kathga khailyo*
>
> *Kathga ji khailyo re.……..…*
>
> *……."*[15]

[14] https://www.youtube.com/watch?v=q1kf_IsPXq4

Transalation:

The riches of all the commission and the perennial stream of bribes. The riches of all the commission and the perennial stream of bribes.

Stop now!! How much are you going to eat?? Stop now …….

142. Should this Court let the allegations levelled by the petitioner also sink in the memory of the people without them being investigated or should the Court *suo motu* take some action to get the matter investigated so as to clear the air?

RIVAL VERSION

143. This Court has held that investigation into the allegations as levelled in the instant FIR could have been investigated in FIR No. 100 of 2018 because they are allegedly part of the larger conspiracy to create disturbance in the State of Uttarakhand, but the petitioner has rival version, he says that money was deposited in the various Bank accounts, as provided to Amratesh Singh Chauhan by TSRCM.

144. Successive FIR's are not permissible with regard to the same offence or offences committed under the same transaction. The test of sameness and/or consequent test guide in this regard,which have been discussed hereinbefore. The question for consideration is as to whether, second FIR in the same offence cannot be lodged and investigated in any contingency. The answer is that the successive FIR, on the same offence can be lodged, provided it is a rival version.

145. In the case of Kari Choudhary (*supra*), the Court observed "**but when there are rival versions in respect of the same episode, they would take the shape of two different FIR's and investigation can be**

[15] https://www.youtube.com/watch?v=Xpu-qSYS8-Y

carried out under both of them by the same investigating agency". In the case of **Upkar Singh Vs. Ved Prakash and others (2004) 13 SCC 292**, this aspect of rival version has further been considered, in fact, in the case of T.T. Antony (*supra*) itself, it was observed that **"in our view a case of fresh investigation based on the second or successive FIR's, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under-way or final-report under Section 173 (2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 of CrPC or under Articles 226/227 of the Constitution."** It amply means that in a counter case FIR may be lodged and investigation may be carried out.

146. In the case of Upkar Singh (*supra*), the Court categorically held that a different version of the FIR may be lodged as a separate FIR and it may be investigated. Similarly in the case of Babubhai (*supra*) and Nirmal Singh Kahlon (*supra*), it was held that successive FIR on different version may be registered and investigation carried out.

SCOPE OF ARTICLE 226 OF THE CONSTITUTION OF INDIA

147. This petition is entertained under Article 226 of the Constitution of India. This is a jurisdiction which is quite wide not restricted. In the case of **Dwarka Nath Vs. Income Tax Officer, AIR 1966 SC 81**, in para no. 4 the Hon'ble Supreme Court interpreted the scope of Article 226 of the Constitution of India, which is a hereunder:-

> "4. We shall first take the preliminary objection, for if we maintain it, no other question will rise for consideration. Article 226 of the Constitution reads:
>
> "……..every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of habeaus

corpus, mandamus, prohibition quo-warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any purpose."

This article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, order or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of the country. Any attempt to equate the scope of the power of the High Court under Art. 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article through defined channels……"

148. Further in the case of **Rohtash Industries Ltd and another Vs. Rohtash Industries Staff Union and other, 1976 (2) SCC 82**, the Hon'ble Court observed that the mentor of law is justice and a potent drug should be judiciously administered. In para 9 the Court observed as hereunder:-

"**9.** The expansive and extraordinary power of the High Courts under Article 226 is as wide as the amplitude of the language used indicates and so can affect any person — even a private individual — and be available for any (other) purpose — even one for which another remedy may exist. The amendment to Article 226 in 1963 inserting Article 226 (1-A) reiterates the targets of the writ power as inclusive of any person by the expressive reference to 'the residence of such person'. But it is one thing to affirm the jurisdiction, another to authorise its free exercise like a bull in a china shop. This Court has spelt out wise and clear restraints on the use of this extraordinary remedy and High Courts will not go beyond those wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate. **The mentor of law is justice and a potent drug should be judiciously administered.** Speaking in critical retrospect and portentous prospect, the writ power has, by and large, been the people's sentinel on the *quivive* and to

> cut back on or liquidate that power may cast a peril to human rights. We hold that the award here is not beyond the legal reach of Article 226, although this power must be kept in severely judicious leash."
>
> (emphasis supplied)

149. In the case of **Air India Statutory Corporation Vs. United Labour Union, (1997) 9 SCC 377**, the Hon'ble Supreme Court observed **"the founding fathers placed not limitation or fetters on the powers of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court *as sentinel on thequivive* is to meet out justice in the given facts"**.

150. In the case of **Gujarat Steel Tubes Ltd. Vs. Gujarat Steel Tubes Mazdoor Sabha and others, (1980) 2 SCC 593**, the scope of Article 226 has further been examined and the Court observed as hereunder:-

> **"73.** While the remedy under Article 226 is extraordinary and is of Anglo-Saxon vintage, it is not a carbon copy of English processes. Article 226 is a sparing surgery but the lancet operates where injustice suppurates. While traditional restraints like availability of alternative remedy hold back the court, and judicial power should not ordinarily rush in where the other two branches fear to tread, **judicial daring is not daunted where glaring injustice demands even affirmative action**. The wide words of Article 226 are designed for service of the lowly numbers in their grievances if the subject belongs to the court's province and the remedy is appropriate to the judicial process. There is a native hue about Article 226, without being anglophilic or anglophobic in attitude. Viewed from this jurisprudential perspective, we have to be cautious both in not overstepping as if Article 226 were as large as an appeal and not failing to intervene where a grave error has crept in. Moreover, we sit here in appeal over the High Court's judgment. And an appellate power interferes *not* when the order appealed is not right but only when it is clearly wrong. The difference is real, though fine.
>
> **79.** The basis of this submission, as we conceive it, is the traditional limitations woven around high prerogative writs. Without examining the correctness of this limitation, we disregard it because while Article 226 has been inspired by the royal writs its sweep and scope exceed hide-bound British processes of yore. We are what we are because our Constitution-framers have felt the need for a pervasive reserve power in the higher judiciary to right wrongs under our conditions. Heritage cannot hamstring nor custom constrict where the language used is wisely wide. The British paradigms are not necessarily models in the Indian Republic. So broad are the expressive expressions designedly used in Article 226 that any order which should have been made by the lower authority could be made by the High Court. The very

> width of the power and the disinclination to meddle, except where gross injustice or fatal illegality and the like are present, inhibit the exercise but do not abolish the power."
>
> (emphasis supplied)

151. The petition has been filed for quashing an FIR etc. Petitioner has not sought any inquiry into the allegations with regard to corruption which he levelled in the social media publication, particularly, the allegations, which he levelled in para 8 of the petition. The co-accused in the FIR was granted interim bail by this Court, which was challenged in SLP No. 4189 of 2020. The SLP was dismissed but the Hon'ble Court observed that **"we may, however, clarify that merely because respondent is on interim bail,the same will not entitle the respondent not to cooperate with the investigation carried out by the petitioner as allegations are serious."** The seriousness of allegations is not only with regard to the falseness relating to the informant alone. Seriousness is of the corruption charges also.

152. The question is as to whether this Court can*suo motu*order for any investigation. In the case of **Bangalore Development Authority Vs. Vijaya Leasing Limited and others,(2013) 14 SCC 737**, an order passed in absence of a challenge was held valid. Now if, this Court pass any order with regard to an inquiry it also touches upon Amratesh Singh Chauhan and TSRCM. TSRCM is not a party in these petitions. But then, it is not necessary that before lodging of an FIR or order of investigation, the person against whom FIR is proposed to be lodged or investigation ordered should be made party. In fact, in the case of **E. Sivakumar Vs. Union of India and others, (2018) 7 SCC 367** Hon'ble Court categorically held that **"accused is not required to be heard at the stage of investigation…….the fact that petitioner was not impleaded as party in the writ petition or was not heard *per se* cannot be a basis to label the impugned judgment as narrated."**

153. In view of the settled law, this Court can within the scope of jurisdiction under Article 226,order for investigation into the

allegationslevelled by the petitioner in para 8 of the petition. This Court is of the view that considering the nature of allegations levelled against Trivendra Singh Rawat, the Chief Minister of the State, it would be appropriate to unfold the truth. It would be in the interest of the State that the doubts are cleared. Therefore, while allowing the petition, this Court proposes for investigation also.

154. In view of the nature of the allegations, this Court is of the view that the CBI should be directed to lodge an FIR on the basis of allegations levelled in para 8 of the instant petition and investigate the case in accordance with law.

CONCLUSIONS

155. In view of the aforesaid discussion, I hold :

155.1. The allegations as levelled in the instant FIR do not make out any *prima-facie* case against the petitioners.

155.2. The procedure adopted on the communication dated 07.07.2020 (i.e., the application given by the informant to the Police on 09.07.2020) is not in accordance with law.

155.3. The allegations as levelled in the instant FIR could have been further investigated in the FIR No. 100 of 2018. It is, in fact, lodging of Second FIR on the same transaction (i.e. conspiring against the Government of Uttarakhand), which is subject-matter in FIR No. 100 of 2018. Registration of the instant FIR is not permissible under law.

155.4. The communication dated 07.07.2020, subsequent inquiry as well as the lodging of the instant FIR and other activities that followed are actuated by *malafide*.

155.5. Accordingly, FIR No. 265 of 2020, under Sections 420, 467, 468, 469, 471 and 120B IPC, Police Station Nehru Colony, District Dehradun is hereby quashed.

155.6. Superintendent of Police, CBI Dehradun is directed to register an FIR on the basis of the allegations levelled in para

8 of the petition in WPCRL no. 1187 of 2020 and investigate the case in accordance with law, with promptitude.

155.7. Entire paper-book be sent to Superintendent of PoliceCBI Dehradun via both e-mail and hardcopy within two days.

155.8. Learned Counsel for the petitioner shall provide soft copy as well as hard copy of the paper-book to the registry by tomorrow afternoon.

156. All the three petitions are allowed accordingly.

(Ravindra Maithani, J.)

27.10.2020

Jitendra