

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

TRANSFER PETITION (CRL.) NOs. 291-292/2024

SUNITA SHARMA

... Petitioner

VERSUS

STATE OF UTTARAKHAND & OTHERS

... Respondents

ORDER

The present transfer petitions are preferred by the petitioner under section 406 of the Code of Criminal Procedure, 1973 ('CrPC' for short) seeking the following reliefs -

"A. Allow the present Petition and transfer Miscellaneous Criminal Case No.320 of 2020 and 2990 of 2022 out of FIR No.310/2020 dated 09.05.2020 pending before the Ld. ACJM, Haridwar, Uttarakhand to the Ld. District and Sessions Judge, Patiala House Court, New Delhi.

B. Pass any other and further Orders(s) as this Hon'ble Court may deem fit."

2. On hearing learned counsel for the petitioner and learned senior counsel for respondent no.2 and learned counsel for the first respondent(s)/State and on the suggestion of this Court, respondent nos.9 and 10 were impleaded by the petitioner.

3. Thereafter, on several dates, these transfer petitions were heard and considered at length. During the course of hearing, it was noted by this Court that this is a case where there ought to be a quietus given to all the complaints and proceedings pending in different fora in the State of Uttarakhand rather than accepting the prayer sought by the petitioner herein for transfer of the aforesaid FIR and criminal cases pending in the State of Uttarakhand to Patiala House Court, New Delhi. In this regard, learned counsel for the petitioner and learned senior counsel appearing for the respondent(s) as well as learned counsel for the respondent/State have sought instructions in the matter.

4. Consequently, an application under Article 142(1) of the Constitution of India has been filed by the petitioner herein seeking the following reliefs -

“(a) Quash Criminal Case No.115/2023 (Computer Case No.2990/2022) before Ld. Additional Chief Judicial Magistrate, Haridwar arising from FIR No.310/2020 filed at P.S. Kotwali, Haridwar, Uttarakhand; and

(b) Quash FIR No.310/2020 dated 05.05.2020 at P.S. Kotwali, Haridwar, Uttarakhand and all proceedings and chargesheets arising therefrom; and

(c) Quash FIR No.580/2022 dated 19.11.2022 at P.S. Kotwali, Haridwar, Uttarakhand against the petitioner under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986; all proceedings arising therefrom; and

(d) Pass such other orders as may be deemed fit and proper in the facts and circumstances of the case.”

5. The facts leading to the present transfer petitions may be narrated briefly as a background to the consideration of the application filed by the petitioner under Article 142(1) of the Constitution of India. The case concerns a complaint and the initial registration of FIR against one Sri Pranav Pandya and his wife Smt. Shailbala Pandya [hereinafter referred to as "earlier accused persons"], who are stated to be in charge of a religious organization namely “Shantikunj Ashram” and are influential individuals in the State of Uttarakhand, by one of the devotees/volunteer girls (Devkanya) [hereinafter called “prosecutrix”] who belongs to the State of Chhattisgarh. The said complainant (prosecutrix herein) is said to have joined the aforesaid Ashram at the age of fourteen in the year 2010.

6. That on 01.11.2019, the petitioner received a telephone call from the prosecutrix alleging acts of rape and intimidation against her by the earlier accused persons. It is averred that the petitioner is a social worker and has been involved with various activities dedicated towards welfare of vulnerable women since the year 1995 and runs a registered society by the name of "Gayatri Women Welfare and Protection Society".

7. Initially, a zero FIR was lodged at Vivek Vihar Police Station, Delhi, after the intervention of the National Commission for Women and other entities, including NALSA, which came to the aid of the prosecutrix. Subsequently, support was also extended by the present petitioner to the prosecutrix by offering accommodation, etc., at the request of the police while she was facing threats from the earlier accused persons.

8. Subsequently, the zero FIR was converted into FIR No. 310/2020, and the investigation was transferred to P.S. Nagar Kotwali, Haridwar, Uttarakhand. The Prosecutrix corroborated the contents of her initial complaint in her statement under Section 161 CrPC dated 27.05.2020 and videographed Statement under Section 164 CrPC as well as videographed spot inspection, both dated 02.06.2020.

9. The police, however, filed Final Report No.1 on 10.10.2020 stating that the evidence that had come to light during the investigation did not confirm the allegations made by the Prosecutrix. The Prosecutrix then returned to Chhattisgarh. On 06.02.2021, 24.07.2021 and 17.08.2021, prosecutrix turned hostile and filed affidavits stating that she accepted the Final Report No.1. However, in the latter two affidavits, she alleged that the Petitioner herein and respondent nos.2 to 6 herein had forced her to file the complaint against the earlier accused persons.

10. The learned Chief Judicial Magistrate rejected the Final Report No.1 in Miscellaneous Criminal Case No. 320/2020 in FIR No.310/2020 and ordered further investigation in the matter. Consequently, the police, instead of conducting further investigation into the originally registered crime of rape, dropped further investigation in respect of those allegations against the earlier accused persons and instead conducted a re-investigation and proceeded to investigate the allegations levelled in the victim's affidavit(s) against the present petitioner and respondent nos. 2 to 6 herein.

11. Thereafter, three chargesheets were filed by the police. The first was Charge-sheet No.3 dated 21.05.2022 against respondent nos. 3 and 4. The second was Charge-sheet No.4 dated 22.07.2022 against respondent nos. 5 and 8.

In the meanwhile, before the third charge-sheet could be filed, the petitioner being aggrieved by the above developments, filed W.P. (Crl.) No.1131/2022 before the High Court of Uttarakhand seeking quashing of the re-investigation arising out of FIR No.310/2020 against her and seeking protection from arrest. However, it appears that the petition went unheard for months due to recusal of Judges. Subsequently, the petitioner was arrested on 16.09.2022 from near the premises of the High Court. As a result, on 24.09.2022, W.P.(Crl.) No.1131/2022 was dismissed as the prayer for stay of arrest had become infructuous. However, the petitioner's local counsel failed to inform the Hon'ble Court that the other prayer for quashing of the re-investigation arising out of the said FIR still stood.

12. The third Charge-sheet No.3 was filed by the police on 11.11.2022 against the petitioner and respondent nos.2 and 6 herein. Thereafter, the petitioner was also booked under the U.P. Gangsters & Anti-Social Activities (Prevention) Act, 1986 vide FIR No.580/2022.

13. All three bail applications filed by the petitioner in the learned Trial Court were dismissed on the sole ground of seriousness of the allegations and gravity of the alleged crime. On 28.01.2023, learned Chief Judicial Magistrate framed charges against petitioner and other accused persons under Sections 365, 368, 323, 504, 506 read with Section 34 and 120B of IPC.

14. Therefore, there are four chargesheets filed in FIR No.310/2020. The first one was rejected. The three other charge-sheets that were filed proceeded ahead as Criminal Case No. 115/2023 (Computer Case No.2990/2022) vide Order dated 29.04.2023 passed by Ld. Additional Chief Judicial Magistrate, Haridwar, Uttarakhand.

15. The petitioner put forth several instances of the influence of the earlier accused persons witnessed during the trial. First, the petitioner contended that trial court records were tampered with, and certain documents and electronic records that could bring forth the truth were misplaced from court records, e.g., the electronic evidence containing videography of the prosecutrix's identification of the crime scene (religious ashram of the original accused), where she alleged the commission of the offense of rape, was misplaced from court records. Second, the advocate who was previously appearing before the trial court for the earlier accused persons subsequently appeared for the prosecutrix. Third, court staff was not complying with the Trial Court's order to supply prosecution material to the accused persons (including the petitioner) under section 207 Cr.P.C. On 25.08.2023, petitioner was also alleged to have been verbally attacked and threatened by the prosecutrix's lawyers.

16. The petitioner submitted that all the respondents other than the State and Complainant have no objection if the trial, sought to be transferred under the present petition, was transferred to Delhi from

Haridwar, Uttarakhand and that the balance of convenience lies in their favour.

17. Vide order dated 21.03.2024, this Court issued notice on these transfer petitions and granted an interim order of stay of further proceedings in Miscellaneous Criminal Case Nos.320/2020 and 2990/2022 in FIR No.310/2020 pending before the Court of learned ACJM, Haridwar, Uttarakhand until further orders.

18. On 04.12.2024, this Court recorded the submission of the parties that there was a consensus amongst them to put an end to all controversies that arose *inter se* between them. Learned Counsel for the petitioner had also submitted that a formal application under Article 142 of the Constitution would be filed seeking the necessary reliefs. The order of this Court on 04.12.2024 is reproduced as follows:

“Learned counsel for the petitioner as well as learned senior counsel appearing for the respondents have submitted that there is a consensus amongst the parties to put an end to all controversies that have been arisen *inter se* between them.

Learned counsel for the petitioner, Shri Shukla and learned counsel, Ms. Shree Mandar submitted that a formal application under Article 142 of the Constitution would be filed seeking the necessary reliefs for giving a quietus to the disputes inter se between the parties.

Hence, the matters stand adjourned to 11.12.2024.”

19. Thereafter, the petitioner has filed an application IA No.285882 of 2024 under Article 142 of the Constitution of India seeking quashing of FIR No.310 of 2020, PS Kotwali, District Haridwar, Uttarakhand and all proceedings arising from it, including quashing of Criminal Case No.115/2023 arising out of FIR No.310/2020 and quashing of FIR No.580/2022, PS Kotwali, District Haridwar, Uttarakhand and all proceedings arising from it.

20. Article 142 of the Constitution of India provides as follows:

“142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.

(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until

provision in that behalf is so made, in such manner as the President may by order prescribe.

Page 10 of 19

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.”

21. In ***Union Carbide Corporation vs. Union of India, (1991) 4***

SCC 584, the Constitution Bench of this Court noted that:

“83. It is necessary to set at rest certain misconceptions in the arguments touching the scope of the powers of this Court under Article 142(1) of the Constitution. These issues are matters of serious public importance. The proposition that a provision in any ordinary law irrespective of the importance of the public policy on which it is founded, operates to limit the powers of the apex Court under Article 142(1) is unsound and erroneous.

xxx

We agree with Shri Nariman that the power of the Court under Article 142 insofar as quashing of criminal proceedings are concerned is not exhausted by Section 320 or 321 or 482 CrPC or all of them put together. The power under Article 142 is at an entirely different level and of a different quality. Prohibitions or limitations or provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Article 142.”

22. In ***Ramgopal vs. State of M.P., (2022) 14 SCC 531***, this Court

further opined that:

Page 11 of 19

“18. It is now a well crystalized axiom that the plenary jurisdiction of this Court to impart complete justice under Article 142 cannot ipso facto be limited or restricted by ordinary statutory provisions. It is also noteworthy that even in the absence of an express provision akin to Section 482 Cr.P.C. conferring powers on the Supreme Court to abrogate and set aside criminal proceedings, the jurisdiction exercisable under Article 142 of the Constitution embraces this Court with scopious powers to quash criminal proceedings also, so as to secure complete justice. In doing so, due regard must be given to the overarching objective of sentencing in the criminal justice system, which is grounded on the sub-lime philosophy of maintenance of peace of the collective and that the rationale of placing an individual behind bars is aimed at his reformation.”

23. During the course of submission, Sri Sidharth Aggarwal, learned senior counsel, submitted that he has instructions from the prosecutrix/complainant in FIR No.310/2020 to the effect that if this Court is to exercise its powers to allow the said application filed by the petitioner herein, she would have no objection to the same. Similarly, learned senior counsel Sri Luthra appearing for respondent nos.9 and 10, who have been impleaded in these transfer petitions and against whom FIR No.310/2020 was initially lodged, also submitted on instructions from the said respondent(s) that they would have no

objection in the event this Court is to exercise its powers to grant the prayer sought for by the petitioner herein.

Page 12 of 19

24. Learned counsel appearing for the respondent/State submitted that if ultimately the parties *inter se* in respect of whom these criminal proceedings are pending are at *ad idem* to seek a closure, this Court may exercise its discretion in the matter in accordance with law insofar as FIR No.310/2020 and the connected cases including Criminal Case No.115/2023 is concerned. However, he submitted that FIR No.580/2022 dated 19.11.2022 is filed not only as against the petitioner herein; that there are other persons who are also accused insofar as the said FIR is concerned, which has been lodged under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986. He therefore, submitted that this Court may not exercise its jurisdiction to quash FIR No.580/2022 dated 19.11.2022 even as against the petitioner herein while considering the application filed by the petitioner herein under Article 142(1) of the Constitution.

25. By way of reply to the submission made by learned counsel for the respondent/State, learned counsel for the petitioner submitted that FIR No.580/2022 dated 19.11.2022 registered at P.S. Kotwali, Haridwar, Uttarakhand invoking the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 as against the petitioner herein solely arises from FIR No.310/2020 and therefore, if this Court is to exercise discretion to quash the aforesaid FIR and connected cases, then insofar as the petitioner herein is concerned, FIR No.580/2022 dated 19.11.2022 may also be quashed.

26. Learned counsel appearing for the respective respondent(s) submitted that respondent nos.2, 4, 5, 6 and 8 are implicated in FIR No.580/2022 and respondent no.3 is implicated only in FIR No.310/2020. They submitted that if the relief is being granted to the petitioner herein, a similar relief may be extended to these respondents also.

27. However, we do not think that at this stage their prayers could be considered as they have not sought for any relief as such

in these proceedings in the context of seeking transfer of the criminal proceeding as sought for by the petitioner herein. Therefore, at this stage, the prayers sought for by those respondents herein cannot be considered in this proceeding.

28. We have narrated the facts giving rise to these transfer petitions and we have analysed the same. We have considered the arguments advanced at the Bar. We have also noted the reasons cited by the petitioner for seeking quashing of the aforesaid cases.

29. Learned counsel for the petitioner and learned senior counsel appearing for the respondents submitted that it would sub-serve the interest of justice if these proceedings could be quashed not only as against the petitioner herein but also against respondent nos.9 and 10 in respect of FIR No.310/2020 as well as the connected cases arising therefrom including Criminal Case No.115/2023.

30. We find that the prayers sought by the petitioner herein and the corresponding prayers sought for by respondent nos.9 and 10 are reasonable and ought to be accepted particularly in the

Page 15 of 19

context of the submission of learned senior counsel appearing for the original complainant in FIR No.310/2020 which is to bring about a quietus to the entire controversy and criminal litigation arising between the parties.

31. In the circumstances, we accept the prayers sought for by the petitioner herein and quash FIR No.310/2020 dated 05.05.2020 registered at P.S. Kotwali, Haridwar, Uttarakhand and all proceedings including charge-sheet arising therefrom insofar as the petitioner and respondent nos.2 to 6 and 8 to 10 herein are concerned. Consequently, Criminal Case No.115/2023 (Computer Case No.2990/2022) pending before the learned Additional Chief Judicial Magistrate, Haridwar arising from FIR No.310/2020, referred to above, shall also stand quashed insofar as the petitioner and respondent nos.2 to 6 as well as respondent nos.8-10 are concerned.

32. Insofar as FIR No.580/2022 dated 19.11.2022 at P.S. Kotwali, Haridwar, Uttarakhand filed *inter alia* against the petitioner

herein under the provisions of Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 is concerned, we

Page 16 of 19

note on the perusal of the said FIR that it also arises out of FIR No.310/2020, referred to above. In the circumstances, since we are quashing FIR No.310/2020 dated 05.05.2020 and all proceedings arising therefrom insofar as the petitioner herein is concerned, consequently, FIR No.580/2022 dated 19.11.2022 registered at P.S. Kotwali, Haridwar, Uttarakhand instituted under the provisions of Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 also stands quashed insofar as petitioner herein is concerned.

33. Further, in order to give a quietus to all controversies between the parties, we issue the following directions -

- (i) the private parties herein shall not file any other case whether civil or criminal against each other emanating from FIR No.310/2020 or any related subject;
- (ii) the parties herein shall not issue any press statement or media briefing to any print or electronic media or any other social media platform in relation to these

proceedings;

Page 17 of 19

(iii) any disregard of the aforesaid direction by any of the parties shall be viewed seriously by this Court.

(iv) In future, the petitioner and respondent nos.2 to 10 shall forbear from making any allegations or threats against each other or their family members in relation to these proceedings and subject matter thereof.

(v) The private parties herein shall not interfere in the affairs of each other.

(vi) The petitioner and respondent no.2 to 6 shall keep away from Shanti Kunj, Haridwar, which is stated to be the headquarter of Akhil Vishwa Gyatri Pariwar, or any other branch of the said entity in any other part of the country.

34. In view of the closure of proceedings in Criminal Case No.115/2023, the observations, if any, made by the learned Additional Chief Judicial Magistrate, Haridwar against Sri Atul

Kumar, learned AOR would no longer have any efficacy.

The application filed under Article 142 of the Constitution of India is allowed and disposed of in the aforesaid terms.

These Transfer Petitions stand disposed of accordingly.

..... J.
[B.V. NAGARATHNA]

..... J.
[NONGMEIKAPAM KOTISWAR SINGH]

**NEW DELHI;
DECEMBER 11, 2024.**

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Transfer Petition(s) (Criminal) No(s). 291-292/2024

SUNITA SHARMA

Petitioner(s)

VERSUS

STATE OF UTTARAKHAND & ORS.

Respondent(s)

(IA No. 16431/2024 - EXEMPTION FROM FILING O.T.

IA No. 16429/2024 - STAY APPLICATION

IA No.285882 of 2024)

Date : 11-12-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA

HON'BLE MR. JUSTICE NONGMEIKAPAM KOTISWAR SINGH

For Petitioner(s) Mr. Prashant Bhushan, AOR
Ms. Nisha Tiwari, Adv.
Ms. Suroor Mander, Adv.For Respondent(s) Mr. Abhishek Atrey, AOR
Dr. Abhishek Atrey, Adv.
Ms. Ishita Bist, Adv.Mr. Amit Shukla, Adv.
Mr. Varun Punia, AOR
Mr. Deva Singh Shukla, Adv.
Ms. Neha Shukla, Adv.
Ms. Kumudini Shukla, Adv.
Mr. Amit Kumar, Adv.
Mr. Atul Mishra, Adv.
Mr. Ashish Verma, Adv.
Mr. Rahul Ranjan, Adv.Mr. Vivek Gupta, AOR
Mr. Mrinmay Bhattmewara, Adv.
Mr. Ankit Verma, Adv.
Mr. Govind Gupta, Adv.Mr. Siddharth Agarwal, Adv.
Mr. Himanshu Shekhar, AOR
Mr. Parth Shekhar, Adv.
Mr. Shubham Singh, Adv.Mr. Sidharth Luthra, Sr. Adv.
Mr. Ayush Kaushik, Adv.
Mr. Sougat Pati, Adv.

contd..

Ms. Tanishka Khatana, Adv.
Mr. Kaustabh Chauhan, Adv.
Ms. Mitali Umat, Adv.
Mr. Abhay Pratap Singh, AOR

UPON hearing the counsel the Court made the following
O R D E R

The application filed under Article 142 of the Constitution of India is allowed and disposed of.

These Transfer Petitions stand disposed of in terms of the signed order.

Pending application(s), if any, shall also stand disposed of.

(NEETU SACHDEVA)
ASTT. REGISTRAR-cum-PS

(DIVYA BABBAR)
COURT MASTER (NSH)

(Signed order is placed on the file)