

**HIGH COURT OF UTTARAKHAND AT
NAINITAL**

Criminal Misc. Application No.1757 of 2022

Ganesh Datt Badhani

....Petitioner

Versus

State of Uttarakhand and Another

....Respondents

Present:-

Mr. Aditya Singh, Advocate for the petitioner.

Ms. Manisha Rana Singh, A.G.A. for the State.

JUDGMENT

Hon'ble Ravindra Maithani, J. (Oral)

The challenge in this petition is made to the following:-

- (i) Order dated 07.05.2022, passed in Criminal Case No.259 of 2020, State Vs. Ganesh Datt Badhani, ("the case") by the Court of 3rd Additional Civil Judge (Senior Division)/ACJM, Haridwar, by which the Court directed that there are sufficient grounds to frame charge under Sections 324, 504 and 506 IPC against the petitioner. And;
- (ii) Judgment and order dated 16.08.2022, passed in Criminal Revision No.178 of 2022, Ganesh Badhani Vs. State of Uttarakhand and Another, by the Court of District and Sessions Judge, Haridwar. By

it, the order dated 07.05.2022, passed in the case, has been upheld.

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

3. Facts necessary to appreciate the controversy, briefly stated, are as follows: The FIR in the instant case was lodged by the respondent no.2, Rajendra Kumar on 30.01.2018. According to it, when the informant was returning to his house at about 9:15 PM, the petitioner attacked him on his head by a sharp edged weapon, due to which he fell on the ground. Subsequently, when the informant reached his home, he along with his son, went to hospital.

4. Learned counsel for the petitioner would submit that the petitioner was not present at the place of incident, at the time when the incident allegedly took place. He would submit that the applicant works in a Government Department. He was on duty and the Superior Officers have endorsed it that on 29.01.2018, the applicant was on duty from 04:00 PM to 12:00 in the midnight. It is argued that the Investigation Officer has not considered this aspect and did not investigate it. He would also submit that the certificate given by Government Officer is admissible in evidence, in view of Section 35 of the Indian Evidence Act, 1872 ("the Act") unless otherwise proved.

5. Learned counsel for the petitioner would also submit that, in fact, earlier, the petitioner had filed a report against the informant of the instant case, in which matter, a revision was preferred by the informant of the instant case being CRLR No.240 of 2019 (“the revision”). In the revision, on 14.06.2018, the informant had obtained a stay order. It is argued that as a counterblast to it, the FIR in the instant case has been lodged. He would also place reliance upon the principles of law as laid down in the case of *Birad Mal Singhvi Vs. Anand Purohit*, 1988 Supp SCC 604, to argue that the entry made in Government record is admissible.

6. Learned State Counsel would submit that there is no illegality in the impugned orders.

7. The impugned order has been passed in the case under Section 240 of the Code of Criminal Procedure, 1973 (“the Code”). In fact, Sections 239 and 240 of the Code are interconnected. In case the Magistrate considers that the charges are groundless, he may record a finding of discharge and if, in the opinion of the Magistrate, there are sufficient grounds to frame charges, charge(s) shall be framed. This is what is provided under Section 240 of the Code. Sections 239 and 240 of the Code read as follows:-

“239. When accused shall be discharged.—If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the

accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

240. Framing of charge.—(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

8. The relevance of evidence, its admissibility and proof, these are three different concepts. What is relevant has been defined in the Act from Section 6 to Section 55. Section 35 of the Act also finds place in it, which reads as follows:

“35. Relevancy of entry in public record made in performance of duty.— An entry in any public or other official book, register or record or an electronic record], stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record or an electronic record, is kept, is itself a relevant fact.”

9. A bare reading of Section 35 of the Act does not reveal that anything recorded in a Government record, on its face value, should be presumed to be true, unless otherwise proved. What Section 35 of the Act speaks of it is that the documents mentioned therein shall be admissible.

10. In the case of Birad (*supra*), the Hon’ble Supreme Court, in para 15, discussed this concept as follows:-

“15.

.....
Section 35 of the Indian Evidence Act lays down that entry in any public, official book, register, record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty specially enjoined by the law of

the country is itself the relevant fact. To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record; secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded.

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11. In fact, the admissibility of documents pertaining to age of someone *qua* Section 35 of the Act, has further been discussed by the Hon’ble Supreme Court in the case of Satpal Singh Vs. State of Haryana, (2010) 8 SCC 714, and after discussing the laws on the point, the Hon’ble Supreme Court held that “entry in school register/certificate requires to be proved in accordance with law.” In Para 28, the Hon’ble Supreme Court observed as follows:-

“28. Thus, the law on the issue can be summarised that the entry made in the official record by an official or person authorised in performance of an official duty is admissible under Section 35 of the Evidence Act but the party may still ask the court/authority to examine its probative value. The authenticity of the entry would depend as to on whose instruction/information such entry stood recorded and what was his source of information. **Thus, entry in school register/certificate requires to be proved in accordance with law.** Standard of proof for the same remains as in any other civil and criminal case.”

(emphasis supplied)

12. In the case at hand, the petitioner has filed the statements of the informant, his son and the Doctor, who examined the informant at 10:05 PM on the date of incident. The informant has categorically stated that he was attacked

by the petitioner. His son, Sunny Panwar, has also stated that after sustaining the injuries, the informant came back to his home. Thereafter, they went to hospital. The Doctor has also stated that he examined the informant on 29.01.2018, at 10:05 PM and detected injuries on his head.

13. The petitioner claims that he was not present at the place of incident. He relied on a certificate issued by the Government officer. In view of Section 35 of the Act, the certificate may be relevant, but the fact written in it needs to be proved separately, in accordance with law.

14. In fact, in the case of Darshan Singh Vs. State of Punjab, (2016) 3 SCC 37, the Hon'ble Supreme Court categorically held that, **“the word alibi means “elsewhere”. The plea of alibi is not one of the General Exceptions contained in Chapter IV IPC. It is a rule of evidence recognised under Section 11 of the Evidence Act. However, plea of alibi taken by the defence is required to be proved only after prosecution has proved its case against the accused.”**

15. The plea of alibi that is being relied on by the petitioner may not be a ground to discharge. It has to be proved by the petitioner once prosecution leads evidence in the case. Therefore, this Court is of the view that the courts below did not commit any error in directing that the charges shall be framed against the petitioner. There is no merit in

this petition. Accordingly, it deserves to be dismissed, at the stage of admission itself.

16. The petition is dismissed *in limine*.

(Ravindra Maithani, J.)

08.01.2024

Ravi Bisht