
(2025) 12 UK CK 0034

Uttarakhand HC

Case No: Writ Petition (Criminal) No. 745 Of 2024

Lily Nath Agarwal

APPELLANT

Vs

State Of Uttarakhand & Others

RESPONDENT

Date of Decision: Dec. 15, 2025

Acts Referred:

- Indian Penal Code, 1860 - Section 120B, 420
- Code Of Criminal Procedure, 1973 - Section 41A
- Uttar Pradesh Panchayat Raj (Maintenance Of Family Register) Rules, 1970 - Rule 5, 6, 6A
- Constitution Of India, 1950 - Article 226

Hon'ble Judges: Ashish Naithani, J

Bench: Division Bench

Advocate: Rajesh Joshi, Vikash Uniyal, Dharmendra Barthwal, Tribhuwan Phartyal

Final Decision: Allowed

Judgement

Ashish Naithani, J

1. The present writ petition under Article 226 of the Constitution of India is filed by the petitioner for quashing the F.I.R. dated 27.11.2023 being FIR No.0307 of 2023, for the offence punishable under Sections 420 & 120-B of IPC, registered at Police Station Mukhani, District Nainital and further to direct the respondents not to take any coercive action against the Petitioner in pursuance of the abovementioned F.I.R..

2. The Petitioner, Lily Nath Agarwal, is a person of Indian origin and presently a citizen of Australia. She has been residing and working in Sydney since 1990. Her father, Late Badri Nath, inherited ancestral properties situated at Delhi, Haldwani and other locations.

3. Upon the death of the Petitioners father on 07.05.2011, the Petitioner and her five siblings, including Respondent No. 4, became joint successors to the ancestral property. Following disagreements within the family, a Panchayat meeting was convened on 12.05.2011, and a unanimous resolution was passed that all properties of Late Kailash Nath, the father of Late Badri Nath, would be equally divided among the legal heirs. Respondent No. 4 did not attend the Panchayat meeting.

4. Several civil litigations ensued among the siblings regarding partition and testamentary rights. These include a partition suit before the Delhi High Court, a testamentary case concerning an alleged will, and mutation proceedings before the District Magistrate. These disputes have been pending for more than a decade.

5. In June 2011, based on a certificate issued by the Gram Pradhan listing all successors of Late Badri Nath, the names of the Petitioner and her four brothers were included in the Family Register maintained under the U.P. Panchayat Raj (Maintenance of Family Register) Rules, 1970. Their names were entered jointly by the Gram Panchayat Development Officer and the Gram Pradhan, who are the competent authorities.

6. On 27.11.2023, nearly twelve years after the Family Register entries, Respondent No. 4 lodged FIR No. 0307 of 2023 at Police Station Mukhani, District Nainital, alleging that the Petitioner had recorded her name in the Family Register prior to her fathers death, shown herself as the head of the family and was attempting to derive property rights on the basis of such entries. The FIR invokes Sections 420 and later 120-B of the IPC.

7. After registration of the FIR, a notice under Section 41-A Cr.P.C. was issued via email to one of the Petitioners brothers residing abroad, which reflected an appearance date that had already elapsed. The Petitioner thereafter emailed the authorities on 29.05.2024 and 04.06.2024, expressing willingness to cooperate with the investigation and requesting that her statement be recorded through video conferencing as she resides in Australia. No response was received from the investigating agency.

8. The Petitioner asserts that she has not visited India since 2011, that she has not taken any benefit from the Family Register entries, that the entries do not confer title, and that the FIR is motivated by malice in view of the ongoing civil litigations and the advanced stage of evidence in the Delhi High Court. She claims apprehension of arrest on arrival in India, despite there being no elements of cheating or conspiracy against her.

9. Learned counsel for Petitioner submits that the FIR is a clear abuse of process, lodged after an unexplained delay of twelve years, despite the complainant having knowledge of the Family Register entries since 2011. It is argued that the complainant deliberately avoided the statutory remedy of appeal under Rule 6-A of the U.P. Panchayat Raj (Maintenance of Family Register) Rules, 1970.

10. It is submitted that the entries in the Family Register were made by competent authorities under the Rules of 1970 and not by the Petitioner. Such entries neither confer ownership rights nor alter shares in ancestral property. Therefore, no fraudulent inducement or delivery of property is disclosed, which is essential for Section 420 IPC.

11. Learned counsel for Petitioner submits that the dispute is purely civil and is already pending before multiple judicial forums. The FIR has been filed at a strategic stage only to prevent the Petitioner from returning to India to depose in the civil proceedings. It is argued that the ingredients of Sections 420 and 120-B IPC are wholly absent, and the FIR has been engineered with ulterior motives.

12. It is further submitted that the Petitioner is a senior citizen residing abroad, has consistently offered cooperation and requested to participate via video conferencing, but the investigating agency has not responded. The notice under Section 41-A Cr.P.C. is asserted to be defective and issued in violation of statutory safeguards.

13. On these grounds, learned counsel prays for quashing of FIR No. 0307 of 2023 and all consequential proceedings.

14. Learned counsel for the Private Respondent supports the impugned FIR and submits that the allegations require investigation. It is argued that the Petitioner's conduct in causing her name to be entered in the Family Register requires scrutiny, especially in view of the property disputes among the siblings.

15. It is submitted that the complaint raises issues relating to the misuse of family records for obtaining an advantage in property matters. It is therefore contended that the investigating agency ought to be permitted to conduct a full inquiry. It is further argued that this Court should not pre-empt the investigative process.

16. Learned State counsel submits that the FIR discloses allegations which warrant investigation and that the matter is at a pre-trial stage. It is argued that the correctness of the entries in the Family Register, the circumstances in which they were made, and their legal consequences are matters of fact that the investigating agency must examine.

17. Heard learned counsel for the parties and perused the records.

18. The factual background indicates that the parties are real siblings and are engaged in civil disputes regarding partition, testamentary rights and mutation proceedings for more than a decade. These proceedings are pending before competent civil forums, including the High Court of Delhi, and the stage of evidence has already been reached in the partition suit. The property dispute between the parties is thus longstanding, acknowledged and sub-judice before appropriate civil courts.

19. The Family Register entries, which form the foundation of the allegations in the impugned FIR, were admittedly made in the year 2011 by the Gram Panchayat Development Officer and the Gram Pradhan, who are the authorities competent under the U P Panchayat Raj Maintenance of Family Register Rules 1970. The names of the Petitioner and her siblings were included on the basis of a certificate issued by the Gram Pradhan listing all successors of Late Badri Nath. The complainant was aware of these entries contemporaneously, as is evident from the documents placed on record.

20. Under the statutory scheme of the Rules of 1970, any person aggrieved by entries made under Rule 5 or Rule 6 has a remedy of appeal before the Sub Divisional Officer to challenge the correctness of such entries. Respondent No. 4 did not avail this remedy at any point in the past twelve years. The allegations now raised in the FIR relate entirely to the correctness and effect of the Family Register entries, which are matters falling within the domain of the statutory and civil forums. The complainants failure to invoke the available statutory remedy is a significant circumstance.

21. The impugned FIR alleges that the Petitioner recorded her name as the head of the family and that such entries are being used to claim rights in the ancestral property. However, the Family Register is not a document of title. The entries neither confer nor extinguish proprietary rights and do not determine the shares of parties in ancestral properties. The Petitioner has not derived any benefit from the entries in the Family Register and the complainant has not asserted that he was induced to deliver any property or that any actual loss or harm was caused to him. These facts, taken at their face value, do not disclose the elements necessary to constitute the offence of cheating or conspiracy.

22. The delay in lodging the FIR is extraordinary. The Family Register entries were made in June 2011. The FIR was filed on 27 November 2023 after an unexplained delay of twelve years. The complainant has offered no reason for this delay, despite having full knowledge of the entries since their inception. This prolonged and unexplained silence casts serious doubt on the bona fides of the complaint.

23. The surrounding circumstances also require consideration. The civil disputes between the parties are at an advanced stage before the courts at Delhi. The Petitioner resides abroad and is expected to appear to give her evidence in those proceedings. The timing of the FIR, viewed in the context of the pending civil litigations, suggests that the criminal proceedings may have been initiated for purposes other than the enforcement of criminal law. The Petitioner has contended that the FIR is intended to impede her participation in the civil proceedings. This assertion finds support in the sequence of events and in the absence of any contemporaneous grievance regarding the Family Register entries.

24. After registration of the FIR, the notice under Section 41-A of the Cr.P.C. issued to the Petitioner's brother reflected an appearance date which had already expired. The Petitioner thereafter communicated with the investigating agency, expressed her willingness to cooperate and sought permission to record her statement through video conferencing. No response was given by the investigating agency. These circumstances reinforce the apprehension expressed by the Petitioner that the criminal process has been set in motion not for genuine investigative purposes but for exerting pressure.

25. The FIR, when examined in entirety, does not disclose the essential ingredients of the offences alleged. It relates solely to entries in the Family Register made twelve years earlier pursuant to statutory procedure. There is no allegation of inducement, deception or delivery of property. There is no allegation of pecuniary advantage obtained by the Petitioner. The allegations are vague, unsupported by a factual foundation and intrinsically connected with the civil disputes already pending before competent courts.

26. In such circumstances, permitting the criminal proceedings to continue would amount to allowing the criminal process to be used as a tool to settle personal and civil disputes among family members. The investigation into such allegations would not serve the ends of justice and would unnecessarily cause prejudice to the Petitioner without any foundation of criminal culpability.

27. Having considered the totality of facts, the nature of allegations, the prolonged delay, the statutory scheme of the Rules of 1970, the pendency of civil litigations between the parties and the absence of any ingredients of the offences alleged, this Court is of the view that the continuation of the criminal proceedings would be wholly unwarranted and would amount to an abuse of process.

ORDER

For the reasons recorded above, the writ petition succeeds.

The FIR No.0307 of 2023 registered at Police Station Mukhani, District Nainital and all consequential proceedings arising therefrom are hereby quashed.

The Petitioner shall be entitled to cooperate with any lawful civil process before the competent courts without being hindered by the impugned criminal proceedings.

The writ petition is accordingly allowed.