HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Misc. Application No. 1080 of 2024

21st May, 2026

Bhupendra Singh
and Another -Applicants

Versus

State of Uttarakhand
And Another -Respondents

Presence:-
Mr. Lalit Sharma and Mr. K.K. Tiwari, learned counsel for the applicants.
Mr. Akshay Latwal, A.G.A. for the State of Uttarakhand.

Hon'ble Alok Mahra, J.

The present criminal misc. application has been filed by the applicant with a prayer to quash/set-aside the order dated 10.06.2024 passed by learned District and Sessions Judge, Nainital in Misc. Criminal Case No. 29 of 2024, Pramila Devi Vs. Girish Chandra Tewari, insofar as it relates to direction for registration of FIR against the applicants under Section 4 of Scheduled Castes and Scheduled Tribes Act (Prevention of Atrocities) Act, 1989 (for short 'SCST Act') and the entire proceedings arising out from it.

2. Brief facts of the case, in a nutshell, are that a complaint was filed by respondent no. 2, wherein, it was alleged that one Girish Chandra Tiwari hurled abuses and caste related remarks and also did marpeet with her. This incident was of

04.01.2023. She therefore moved a complaint before the Police but Police did not register the same. Thereafter, she preferred an application under Section 156(3) Cr.P.C., which was registered as Complaint Case No. 46 of 2023, which was dismissed in default by the court vide order dated 18.03.2024. Subsequently, a fresh C-482 petition was filed under Section 156(3) Cr.P.C. by the respondent no. 2 on 22.05.2024 i.e. after two months and by the impugned order dated 10.06.2024, the District and Session Judge directed the Police to lodge an FIR against one Girish Chandra Tiwari under Sections 3(2)(v) of SCST Act and Sections 452, 323, 354, 504 and 506 of IPC and since the applicants, who, at the relevant point of time, were serving as Circle Officer and Station House Officer, Mukhani, the Court directed to lodge an FIR against the applicants under Section 4 of SCST Act.

3. Learned counsel for the applicants submits that this order has been passed by the learned Session Judge without any application of mind and without following the mandatory provisions as per proviso to sub-section 2 of Section 4 of SCST Act. It is further submitted that as per the complaint, the incident took place on 04.01.2023, but, the complaint was filed by respondent no. 2 on 18.03.2023 i.e. after more than two months of the alleged incident.

4. Section 4 of SCST Act is quoted hereinbelow:-

> "4. Punishment for neglect of duties.—(1) Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, wilfully neglects his duties required to be performed by him under this Act and the rules made thereunder, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.
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> (2) The duties of public servant referred to in sub-section (1) shall include–
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> (a) to read out to an informant the information given orally, and reduced to writing by the officer in charge of the police station, before taking the signature of the informant;
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> (b) to register a complaint or a First Information Report under this Act and other relevant provisions and to register it under appropriate sections of this Act;
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> (c) to furnish a copy of the information so recorded forthwith to thein formant;
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> (d) to record the statement of the victims or witnesses;
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> (e) to conduct the investigation and file charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days, and to explain the delay if any, in writing;
>
> (f) to correctly prepare, frame and translate any document or electronic record;
>
> (g) to perform any other duty specified in this Act or the rules made thereunder:
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> Provided that the charges in this regard against the public servant shall be booked on the recommendation of an administrative enquiry.
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> (3) The cognizance in respect of any dereliction of duty referred to in sub-section (2) by a public servant shall be taken by the Special Court or the Exclusive Special Court and shall give direction for penal proceedings against such public servant."

5. Learned counsel for the applicant would further submit that as per proviso to sub-section 2 of Section 4 of SCST Act, before lodging of the FIR against the public servant, a recommendation of an administrative inquiry is a sine qua non. But, here in this case, the learned Session Judge

concerned without ordering for an administrative inquiry, directed for registration of an FIR.

6. In support of his contention, learned counsel has relied upon a judgment passed by Hon'ble Apex Court in the case of the State of GNCT of Delhi and Others Vs. Praveen Kumar @ Prashant (Criminal Appeal No. 349 of 2021), wherein, a question was framed by the Hon'ble Apex Court as hereunder:-

> "10.1A. Whether initiating proceedings against the then SHO, P.S. Fatehpur Beri by the impugned judgment conforms to the requirements of section 4 of the Act of 1989?"

7. Further, in paragraph nos. 14, 15 and 16 of the judgment, the Hon'ble Apex Court has held as hereunder:-

> "14. In law, an administrative enquiry presupposes an enquiry into the circumstances in which a public servant has a reason for not acting as expected by the provisions of the Act or whether willfully neglected the duties assigned to the public servant by the Act of 1989.
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> 14.1 Sub-section (3) of section 4 enables the Special Court or Exclusive Special Court to take cognizance of the dereliction of a duty referred to in sub-section (2) of section 4 by a public servant. The reference to subsection (2) in sub-section (3) of section 4 would include the requirement in the proviso and the need for recommendation of an administrative enquiry as well. Alternatively, tapering the application of proviso to a later stage, viz., framing the charge, would defeat the very safeguard the proviso intends to accord to a public servant in the matter of registration of an FIR or facing criminal proceedings. The public servants are governed by conduct and discipline rules. The officers in charge of a police station are fastened with obligations, duties and functions in matters relating to crimes, prosecution, etc. The deviation of conduct is called misconduct by a public servant. Normally the word "misconduct", among other contextual connotations, implies a wrongful intention and not a mere error of judgment. In service jurisprudence, the expression "misconduct" means wrong or improper misconduct, unlawful behaviour, misfeasance, wrong conduct, misdemeanor, etc. [See Baldev Singh Gandhi v. State of Punjab & Anr.8] Misconduct has not been defined in the Advocates Act, 1961. Misconduct, inter alia, envisages a breach of discipline, although it would not be possible

to lay down exhaustively what would constitute misconduct and indiscipline, which, however, is wide enough to include wrongful omission or commission whether done or omitted to be done intentionally or unintentionally. It means, “improper behaviour, intentional wrongdoing or deliberate violation of a rule or standard of behaviour”. Misconduct is said to be a transgression of some established and definite rule of action, where no discretion is left except what necessity may demand; it is a violation of definite law [See Noratanmal Chouraria v. M.R. Murli & Anr.9] 14.2 In the absence of section 4, the dereliction of duty by a public servant would have resulted in disciplinary proceedings and a punishment commensurate to the misconduct found against the public servant. Now for the same set of acts of commission or omission, section 4 makes them punishable and stipulates imprisonment of public servants for a term not less than six months which may extend to one year. The penal action can be set in motion by taking cognizance under section 4(3) of the Act of 1989. Therefore, it is all the more reason that the requirement in the proviso to sub-section (2) of section 4 receives grammatical interpretation and makes a condition precedent for taking cognizance of an offence under section 4(2) of the Act of 1989.

14.3 At this juncture, we refer to the decision in Bijender Singh v. State and Anr. 10 of the High Court of Delhi, which considered a point nearer to the one considered by us in this judgment. We notice with approval the view expressed in Bijender Singh (supra) and the operative portion reads thus: “49. The argument of the learned counsel for the complainant is that the word “charges” occurring in proviso to Section 4(2) of the SC/ST Act is to be interpreted that the enquiry report is to be sought before framing of charges and not before the registration of the FIR. 50. To my mind, the said argument is bereft of merit as the law laid down by the Hon'ble Supreme Court in Charansingh (supra) and as per the proviso noted above, the enquiry report is to be sought before the criminal proceedings are initiated and not before the framing of charges.” 14.4 The absence of recommendation would bar taking cognizance by the Court. In a given case, if a complaint without recommendation is filed before the Magistrate, the Magistrate before proceeding further to keep his decision conforming to section 4(2) read with the proviso, calls for a report/recommendation from the Department against the named public servant. The Special Court or the Exclusive Special Court based on an administrative enquiry report can take cognizance of the alleged offence and thereon direct penal proceedings. By keeping in perspective, the language/scheme of section 4, and on the literal interpretation of sub sections (1), (2) and (3) of section 4, it would be legally permissible that the jurisdiction for infraction of sub-section (2) of section 4 is attracted only on the recommendation of the administrative enquiry and then, the cognizance under sub-section (3) of section 4 is ordered.

15. By adhering to the above procedure, we hold that the Magistrate would have the accusation of a party and view of the Department while deciding to take cognizance of the offence or not. At the cost of repetition stated that, the purpose of an administrative enquiry is to find out the conduct of a public

> servant against whom allegations of failure of duty or function are made and the omission or commission is bonafide or willful.
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> 16. Let us juxtapose the statutory requirement with the chronology of events in the case on hand. On 05.06.2018, the Respondent moved the Court of the Metropolitan Magistrate for action against the named public servant under section 4 of the Act of 1989. The record does not disclose that the Magistrate called for an administrative enquiry report on the dereliction of duties complained against the named public servants. The material records that no case warranting penal proceedings under section 4 has been made out and by the order dated 05.06.2018 the Metropolitan Magistrate dismissed C.T. No. 536/2018. In the above background, let us review the impugned judgment. As noted in paragraph 60 of the impugned judgment, the High Court of Delhi adjudicated the alleged omission or commission by the public servants, and a direction was issued for penal action. Upon due consideration of the method and manner of taking cognizance of an offence against the public servant under section 4 of the Act of 1989, we note that the impugned judgment, for all purposes, adjudicated the alleged dereliction of duty by the named public servants and directed penal prosecution. These directions are not in conformity with the mandate of law. We are convinced that the direction in the impugned judgment for the above reasons and discussion is unsustainable, and accordingly, Point A is answered in favour of the Appellants.

8. On this basis, it is submitted that direction for lodging of the FIR can only be passed against the public servant only on an administrative inquiry report. In absence of any administrative inquiry, the Magistrate/Session Judge concerned cannot direct lodging of FIR under Section 4 of SCST Act against a public servant for dereliction of duties. It is further submitted that the complainant have not approached the Court with the clean hands inasmuch as earlier 156(3) Cr.P.C. application which was filed as Complaint Case No. 46 of 2023 was dismissed on default on 18.03.2024 and a fresh 156(3) Cr.P.C. application was filed on the same set of facts without disclosing that earlier also, 156(3) Cr.P.C. application was filed and was dismissed on default.

9. Considering the submissions of learned counsel for the parties and perusing the material available on record, this Court is of the opinion that in the present case, the learned Session Judge erred by straightaway directing for lodging of FIR under Section 4 of SCST Act against the applicants, who are public servants in violation of proviso to Section 4(2) of the SCST Act. Hence, the applicants deserve to be acquitted of the charges for the said offence. In such circumstances, allowing the criminal proceedings to continue against the applicants would be an abuse of the process of law. Therefore, this Court is of the considered view that it is a fit case to exercise its inherent jurisdiction under Section 482 Cr.P.C. to secure the ends of justice.

10. Accordingly, the present criminal miscellaneous application filed under Section 482 of the Code of Criminal Procedure, 1973 is allowed. Consequently, the order dated 10.06.2024 passed by learned District and Sessions Judge, Nainital in Misc. Application No. 29 of 2024, Pramila Devi Vs. Girish Chandra Tewari, insofar as it relates to direction for registration of FIR against the applicants under Section 4 of Scheduled Castes and Scheduled Tribes Act (Prevention of Atrocities) Act, 1989 is hereby set-aside, qua the applicants.

(Alok Mahra, J.)
21.05.2026

Ujjwal