

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Criminal Misc. Application No.1805 of 2023

Mukhtiyar Singh

.....Applicant

Vs.

State of Uttarakhand & another

.....Respondents

Present:

Mr. Ravi Ranjan, Advocate, for the applicant.

Mr. V.K. Jemini, D.A.G, for the State of Uttarakhand/1.

Hon'ble Sharad Kumar Sharma, J (Oral)

The present applicant has preferred this C482 application questioning the summoning order dated 09.12.2022, as it was passed by the court of Additional Chief Judicial Magistrate, Haldwani, District Nainital, in Criminal Complaint Case No.5406 of 2022, “Dinesh Chandra Tiwari Vs. Mukhtiyar Singh”, whereby the present applicant has been summoned to be tried for the offence under section 138 of the Negotiable Instruments Act.

2. The argument extended by the learned counsel for the applicant could be summarized in the following manner:-

1.He submits that the entire proceedings of the Criminal Case No.5406 of 2022, “Dinesh Chandra Tiwari Vs. Mukhtiyar Singh” would be bad and maliciously oriented because of the fact that the entire genesis of the proceedings has been the sale deed on which they themselves i.e. the complainants have placed reliance and for that purposes he wanted to refer to certain excerpts of the sale deed to establish his case, that the registration of the complaint under section 138 of the NI Act, is malafide.

2. Apart from it, he has also referred to that in the complaint if paragraphs 2 and 3 are taken into consideration, no offence under section 138 of the NI Act, could be said to have been made out owing

to the transactions, which has been referred to in the complaint, which he has relied during the course of the argument.

3. Lastly, he submits that the summoning order, as it has been issued by the court of ACJM, Haldwani, District Nainital on 09.12.2022, and particularly, he has drawn the attention to the contents of paragraph 7, contends that the summoning order is without application of mind because the court of ACJM, has not considered the implications of the pleadings raised in the complaint, as well as to the documents, which was filed thereof in relation to, as to whether at all the offence under section 138 of the NI Act, is made out or not?

3. In order to answer the argument extended by the learned counsel for the applicant, this Court will not have any hesitation to observe that malafides cannot be an “abstract term” under law. Malafides could only be an aspect, which has to be culled out and established only after appreciation of the evidence, and not based upon the perception of the party.

4. Malafide always engages a logical and analytical determination of the facts, as it has been attempted to be carved out by the learned counsel for the applicant in view of the sale deed, which has been appended by him along with the C482 application.

5. This Court is of the view that since malafides is required to be determined by the appreciation of the evidence which could be only depending upon the facts and circumstances of the each case, it cannot be culled out without scrutinizing the evidence, based on which the aspect of the malafide has been argued by the learned counsel for the applicant, and this Court is apprehensive to observe, that where in an eventuality in any case if evidence is required to be determined, in

order to substantiate the argument of the malafides, that would be outside the ambit of the scope under section 482 of the CrPC.

6. The attempt made by the learned counsel for the applicant was to the contents of paragraph 7, which is alleged that it happens to be without application of mind, because the implications of the contents of the complaint as referred above and the sale deed has not been appropriately appreciated by the court prior to issuance of the summoning order dated 09.12.2022.

7. In order to answer this argument extended by the learned counsel for the applicant, this Court is of the view that summoning of the accused as contemplated under section 190, has been an aspect dealt with by the Hon'ble Apex Court in the judgment reported in **2019 (20) SCC 539, "State of Gujarat Vs. Afroz Mohammed Hasanfatta"**, wherein, the Court has observed that, that for the purposes of issuing summons to an accused person the only basic requirement is the satisfaction of the Magistrate regarding the sufficiency of the grounds, standard of proof is not required to be scrutinized with diligence and precision by the Court prior to the issuance of the summoning order because a strict standard of proof is not required is only an explicit satisfaction, which the Court has to go into prior to issuance of the summoning order. The said aspect has been dealt with by the Hon'ble Apex Court in the said judgment in paragraph 39, which is extracted hereunder:-

“39. For issuance of process against the accused, it has to be seen only whether there is sufficient ground for proceeding against the accused. At the stage of issuance of process, the Court is not required to weigh the evidentiary value of the materials on record. The Court must apply its mind to the allegations in the charge sheet and the evidence produced and satisfy itself that there is sufficient ground to proceed against the accused. The Court is not to examine the merits and demerits of the case and not to determine the adequacy of the evidence for holding the accused guilty. The Court is also not required to embark upon the possible defences. Likewise, ‘possible

defences' need not be taken into consideration at the time of issuing process unless there is an ex- facie defence such as a legal bar or if in law the accused is not liable."

8. Almost an akin view has been taken by the Hon'ble Apex Court in yet another case as reported in 2015 (3) SCC 427, "Sonu Gupta Vs. Deepak Gupta", which observe that the issuance of the summoning process, the matter which will be required to be considered by the Magistrate, would be that it should reflect an application of mind only with a view to take a cognizance to issue summons to an accused person to be tried for the offences, which is complaint of. The said aspect has been observed in paragraph 8 of the said judgment, which is extracted hereunder:-

"8. Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the appellant placed reliance which were called for by the learned Magistrate, the learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not."

9. The aforesaid judgment of Sonu Gupta (Supra) too doesn't contemplate and makes a mandate, that the Court while issuing a process has to scrutinize the evidence relied by the accused person with precision in order to oust himself from the necessity of summoning him to be tried for the offences, for which the complaint has been registered.

10. This is not the scope under section 482 of the CrPC, because a simplicitor implication of section 190, is the satisfaction of the court itself, which has to justify the summoning of the accused person, which is quite explicit from the contents of the impugned order dated 09.12.2022, and when the observations made in paragraph 7 is required to be comparatively scrutinized with the contents of the complaint and the sale deed, that in itself will oust the jurisdiction of the 482 of the CrPC, as Court is not conducting mini trial.

11. The similar view has been taken by the Hon'ble Apex Court in the matters of the "State of Odisha Vs. Pratima Mohanty", as reported in AIR 2022 SC 41, wherein, the Court has observed that at the stage when the court is issuing summons, it is only a prima facie satisfaction which is to be recorded by the Court and the Court is not supposed to conduct a pre trial by appreciating the evidence to justify the summoning order. The relevant paragraph 6 and 6.2, of the said judgment, is extracted hereunder:-

"6. At the outset, it is required to be noted that by the impugned judgment and order the High Court in exercise of its powers under Section 482 Cr.P.C. has quashed the criminal proceedings for the offences under Section 13(2) read with Section 13(1)(d) of the Act and Section 420 read with Section 120B IPC. From the impugned judgment and order passed by the High Court, it appears that the High Court has entered into the merits of the allegations and has conducted the minitrial by weighing the evidence in detail which, as such, as observed and held by this Court in a catena of decisions is wholly impermissible. As held by this Court in the case of State of Haryana And Ors. vs Ch. Bhajan Lal And Ors., AIR 1992 SC 604, the powers under Section 482 Cr.P.C. could be exercised either to prevent an abuse of process of any court and/or otherwise to secure the ends of justice. In the said decision this Court had carved out the exceptions to the general rule that normally in exercise of powers under Section 482 Cr.P.C. the criminal proceedings/FIR should not be quashed. Exceptions to the above general rule are carved out in para 102 in Bhajan Lal (supra) which reads as under:

"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 channelized 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 noncognizable 42 PART E 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.”

6.2 It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per settled proposition of law while examining an FIR/complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under Section 482 Cr.P.C. when after a thorough investigation the charge sheet has been filed. At the stage of discharge and/or considering the application **under Section 482 Cr.P.C. the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducting the minitrial.** As held by this Court the powers under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court.”

12. Since the Hon’ble Apex Court in its quite explicit terms has refrained the court exercising the powers under section 482 of CrPC, to venture into the evidence, and conduct a pre trial to scrutinize the propriety of the summoning order, and particularly, the aspect of the malafide as argued by the learned counsel for the applicant. This Court is of the view that it will not be a scope to be ventured into C482 application, all his contentions pertaining to the malafide of the proceedings under section 138 of the NI Act, based upon the observation made in the sale deed, as well as, the complaint filed by the respondent would be a subject matter to be tried by the court of Additional Chief Judicial Magistrate, Haldwani, District Nainital. Hence, this Court declines to interfere in this C482 application. The same is accordingly dismissed.

(Sharad Kumar Sharma, J.)

12.09.2023

NR/