

SL. No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			C482 No. 1894 of 2023 <u>Hon'ble Sharad Kumar Sharma, J.</u> Mr. Narendra Bali, Advocate, for the applicant. Mr. S.C. Dumka, A.G.A., for the State of Uttarakhand. The applicant while putting a challenge to the proceedings of Criminal Case No. 1202 of 2023, State Vs. Salim Ahmad and others, wherein, he has been summoned to be tried for the offences under Sections 147, and 325 of the IPC, has raised two-folds arguments :- - That there is no prima facie case. - That since the chargesheet is based upon the statements recorded in the case diary, the same would be vitiated. This Court feels it apt to answer the two questions. This Court is of the view, that prima facie case is an aspect, which could only be determined by the Court after going through the evidence, and any issue, which requires an appreciation of evidence, will be outside the scope of exercise of inherent powers under Section 482 of the Cr.P.C., because that will amount to, to consider the documents, record its reasoning and appreciate the same. That means, it would be amounting to conducting mini trial, which is deprecated by the Hon'ble Apex Court in the judgement as rendered in Criminal Appeal Nos. 1025-1026 of 2023, Central Bureau of Investigation Vs. Aryan Singh Etc. The said judgment has, in fact, elaborated the basic principles laid down by the Hon'ble Apex Court in the earlier judgment as rendered in State of Odisha Vs. Pratima Mohanty Etc., as reported in 2021 SCC OnLine SC 1222, wherein, in both the judgments, there is a common yardstick, which has been provided by the Hon'ble Apex Court, that the Courts exercising the inherent powers under Section 482 of the Cr.P.C., has to be conscious, that

			if the Court is required to appreciate the evidence, in order to answer the argument extended by the learned counsel for the applicant, it will amount to be conducting a mini trial, which is not permitted under Section 482 of the Cr.P.C. The relevant observation made by the Court is extracted hereunder :- <i>“16. 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 mini-trial. As held by this Court the powers under Section 482 Cr.PC 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.”</i> The argument in relation to the first question, i.e., prima facie case, it cannot be unilaterally accepted based upon the statement or the pleadings raised by the Counsel, because prima facie case is an aspect, which could only be determined after appreciation of evidence and not otherwise. Similar would be the question to be answered in relation to the second argument, as extended by the learned counsel for the applicant, that since the chargesheet is based upon the statement recorded in the case diary, hence, it will vitiate. The said vitiation of the chargesheet, when it entails the appreciation of case diary and the statement recorded therein and its correlated implications, it will be an aspect where the Court is called upon to appreciate evidence, which will be in contravention
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			to the judgment as reported hereinabove. It is not that the applicant does not have an opportunity to argue these aspects when the trial itself proceeds. He is not deprived of his opportunity to substantiate his argument at the stage of trial. But, rather these days, it has become customary that over all trifle issues, the parties approach in the C-482 proceedings, raising a question which entails consideration of evidence, which is not permissible under law. Hence, this conduct of the litigants to approach the Court for exercising of the inherent powers entailing an appreciation of evidence in order to arrive at a conclusion with regard to the questions raised by him has to be deprecated in the light of the aforesaid principles laid down by the Hon'ble Apex Court. Thus, since these two questions involved consideration in the instant C-482 Application itself according to the tenacity of argument of the learned counsel for the applicant, I am not inclined to venture into the evidence to answer the questions raised by the applicant, which is not permissible under Section 482 of the Cr.P.C.. Thus, the C-482 Application lacks merit and the same is accordingly dismissed. (Sharad Kumar Sharma, J.) Dated 21.09.2023 Shiv
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