

Court No. - 69

Case :- APPLICATION U/S 482 No. - 575 of 2001

Applicant :- Pramod Kumar Srivastava

Opposite Party :- State of U.P. and Others

Counsel for Applicant :- Anil Kumar Srivastava

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Samit Gopal,J.

1. Heard Sri Ram Chandra Uttam, Advocate holding brief of Sri Anil Kumar Srivastava, learned counsel for the applicant and Sri Ajay Singh, learned A.G.A.-I for the State and perused the material on record.

2. The present application U/S 482 Cr.P.C. has been filed by the applicant- Pramod Kumar Srivastava with the following prayer:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to: quash the impugned charge-sheet submitted for the alleged offence under sections 218/467/468/471/409/120-B I.P.C. read with section 13 (2) of Prevention of Corruption Act.

It is further prayed that further proceedings, in special trial no. 22 of 2000 pending before the learned Special Judge (Anti-corruption, Gorakhpur, as far as the applicant is concerned, be stayed during the pendency of the aforesaid criminal misc. application before this Hon'ble Court and / or may pass such other and further orders and directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. The applicant is being prosecuted for offences under Sections 218, 467, 468, 471, 409, 120-B I.P.C. read with section 13 (2) of Prevention of Corruption Act in pursuance of an order dated 27.08.1998 by which sanction has been granted for his prosecution.

4. The facts of the case are that from 04.01.1987 to 31.12.1988 the then Assistant Engineer, Bandhi Division, Robertsganj, Sonbhadra, Morja Rehan Beg, Junior Officers P.K. Srivastava (the applicant) posted as Junior Engineer (Civil), Musafir Singh Yadav, Pyare Lal, Ram Kishore, Ram Pyare and Sahodar Ram were involved in the construction work. The said Government servants in conspiracy prepared forged muster roll and showed payment of Rs. 13.50 per day to labours and thereby misappropriated Rs. 10303.50 from 07.11.1988 to 25.03.1989. The payment to the labours were done @ Rs. 10 per day but their charges were shown as Rs. 13.50 per day and a forged muster roll was further prepared and thereby Rs. 28644/- was

misappropriated by them. From 22.02.1988 to 31.08.1988 Rs. 13.50 was shown to be paid to labours but actually Rs. 10/- was paid to them and thus Rs. 1365/- was misappropriated. The matter was investigated and a charge-sheet dated 21.08.1999 against Assistant Engineer Morja Rehan Beg, Junior Engineer P.K. Srivastava, Junior Engineer Musafir Singh Yadav and other accused persons. The present petition has thus been filed challenging the charge-sheet of the present matter and the proceedings of trial.

5. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the allegation of embezzlement are of the year 1987 to 1988 from 04.01.1987 to 31.12.1988 whereas the applicant took charge on 05.05.1985 and handed over charge on 12.10.1987. It is argued that the work was already completed when the applicant took charge. It is further argued that the applicant retired in the year 2014 and as such the proceedings be quashed. It is argued that looking to the delay in trial and that the incident in question is of the year 1987 and 36 years have passed, the proceedings may be quashed and it would be in the fitness of things that the same be quashed.

6. Per contra, learned A.G.A. opposed the prayer for quashing and argued that after investigation charge-sheet has been submitted. It is argued that there is a specific finding of the investigating agency regarding embezzlement of Government funds. It is argued that even during the period of posting of the applicant there is an allegation of money being embezzled. It is argued that in so far as order of sanction granting permission to prosecute the applicant and other co-accused persons is concerned, the same is not under challenge and as such the proceedings cannot be quashed. It is argued that perusal of the documents goes to show that cognizable offence is made out.

7. After having heard learned counsel for the parties and perusing the record, it is evident that the charge-sheet has been submitted against the applicant, sanction to prosecute has been given by the competent authority. In so far as the quantum of money is concerned, the same can never be a ground for quashing. An offence once committed is to be tried and the trial has to reach its conclusion. The quantum of money in the present case is not so negligible that the same should be quashed. In so far as the period of posting of the applicant is concerned, he was very well posted during the period the work was going on. The same cannot be looked into in a petition under Section 482 Cr.P.C. The work whether completed or not is also a matter of trial.

8. It has been held by the Apex Court in the cases of *R.P. Kapur Vs. State of Punjab* : AIR 1960 SC 866; *State of Haryana and Ors. Vs. Bhajan Lal and Others* : 1992 Supp (1) SCC 335; *State of Bihar Vs. P. P. Sharma* : 1992 Supp (1) SCC 222; *Trisuns Chemical Industry Vs. Rajesh Agarwal and Ors.* : (1999) 8 SCC 686; *M. Krishnan Vs. Vijay Singh & Anr.* : (2001) 8 SCC 645; *Zandu Pharmaceuticals Works Ltd. Vs. Mohammd Shariful Haque* : (2005) 1 SCC 122; *M. N. Ojha Vs. Alok Kumar Srivastava* : (2009) 9 SCC 682; *Joseph Salvaraj A. Vs. State of Gujarat and Ors.* : (2011) 7 SCC 59; *Arun Bhandari Vs. State of Uttar Pradesh and Ors.* : (2013) 2 SCC 801; *Md. Allauddin Khan Vs. State of Bihar* : (2019) 6 SCC 107; *Anand Kumar Mohatta and Anr. Vs. State (NCT of Delhi), Department of Home and Anr.* : (2019) 11 SCC 706; *Rajeev Kourav Vs. Balasaheb & others* : (2020) 3 SCC 317; *Nallapareddy Sridhar Reddy Vs. The State of Andhra Pradesh* : (2020) 12 SCC 467, that exercise of inherent power of the High Court under Section 482 of the Code of Criminal Procedure is an exceptional one. Great care should be taken by the High Court before embarking to scrutinize the complaint/FIR/charge-sheet.

9. Accordingly, the present application U/S 482 Cr.P.C. is ***rejected.***

Order Date :- 26.10.2023

AS Rathore

(Samit Gopal,J.)