

A.F.R

Reserved

Neutral Citation No. - 2023:AHC:214731

Court No. - 75

Case :- APPLICATION U/S 482 No. - 6818 of 2002

Applicant :- Mukhiya Gurjar And Others

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

Counsel for Applicant :- K.K. Dwivedi, R.P. Dwivedi

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Umesh Chandra Sharma, J.

1. Heard Sri Dhirendra Bahadur Singh, Advocate, holding brief of Sri K.K. Dwivedi learned counsel for the applicants, Sri Mithilesh Kumar, learned A.G.A for the State and perused the record.

2. This application under Section 482 Cr.P.C has been moved by the applicants to quash the Charge-sheet and entire Criminal Proceeding of Case No. 881 of 2001 (State Versus Tak Chandra and others under Sections 147, 148, 149, 307, 352 and 436 I.P.C and 7 Criminal Law Amendment Act, Police Station Loni, District Ghaziabad, pending in the Court of 05th Additional Chief Judicial Magistrate, Ghaziabad.

3. The applicants has taken ground that the entire allegations of the F.I.R are totally false, fabricated and concocted. It is alleged in the F.I.R that some persons, who were armed with county made pistol, *lathi*, *sticks*, etc. attacked on the police *chauki* and destroyed by way of fire also but no person received any injury and no

police constable or police employee was medically examined in any hospital. The present case is of no injury. Prior to the alleged incident the local public informed the concerned *Chauki* In-Charge regarding the incident of *Dacoity*, murder and rape in the concerned area, due to negligence of the local police. When the opposite party no. 2 did not consider the matter and did not take any necessary action, the local public organized/held a *Panchayat* headed by applicant no. 1, who was an active member and a strong supporter of Samajwadi Party, who had also contested Parliamentary elections two times from Baghpat Constituency and also participated in election of M.L.A. He was the President of All India Pathik Sena. In this regard a public meeting was held near the Police *Chauki*, in which an ultimatum regarding *Dharana* and hunger strike was also given to the higher authorities, due to which the opposite party no. 2 lodged a false report with some allegations against the applicants. Some News items were also published in Daily Amar Ujala and some others News Papers from which it is fully proved that due to the negligence of local police, the incidents had occurred in the concerned area. Several persons and several parties were also present, but the F.I.R has been lodged only against the applicants and some others, who belong to Samajwadi Party due to *mala fide* intention to save the opposite party no. 2 and some police personnels.

4. In the aforesaid *Panchayat*, Tak Chandra *Pradhan*, who has contested Parliamentary Election under the Symbol of B.S.P, one Mr. Shyam Sunder Sharma, President of Lok Dal, District Ghaziabad and one Kartar

Hithora, Member Zila Panchayat, who belong to Lok Dal Party, Jai Bhagwan, Block Pramukh, Loni, of B.S.P., Rajendra Singh, Up-Pramukh, of Lok Dal Party, Madhu Sharma, of B.J.P., Daya Nand real brothers of Roop Chaudhary, Present M.L.A. were also present at the alleged place of occurrence, but the F.I.R has been lodged only against the persons, who are active member and supporter of Samajwadi Party. The police personnels themselves destroyed the old vehicle in concerned police *Chauki* by way of firing and a false report has been lodged against the applicants. The Police *Chauki* was fully safe and no article/material has been destroyed in the concerned Police *Chauki* by the applicants.

5. When the F.I.R was lodged, the applicants filed a Criminal Misc. Writ Petition No. 7362 of 1999 - Mukhiya Gurjar And Others Vs. State of U.P, in which the Hon'ble Court stayed the arrest of the applicants on 07.12.1999 and when the then S.H.O. had taken necessary action against the accused persons relating to Crime No. 626 of 1999, under Sections 394 / 302 I.P.C and also other matters relating to POCSO/rape, *dacoity* etc, then the applicant no. 2 constituted a Committee and demanded compensation in this regard. The Committee also moved a representation to the Chief Minister of the State of U.P. The higher authority admitted the fact that due to negligence of the police personnels three persons were murdered in Nithora and after concluding the investigation the police has submitted charge-sheet against the applicants, which is annexed as Annexure No. 5 to the application.

6. The learned A.C.J.M 5th, Ghaziabad, *vide* his order dated 30.05.2002, issued N.B.W against the applicants and fixed 20th July, 2002 for appearance. The I.O. of the case has submitted a charge-sheet without any evidence and all the police personnels have given similar statement. It is alleged that about 100-150 persons armed with different type of weapons attacked on the police party, but no police personnel received any grievous injury. The I.O of the case has recorded the statement of Sri U.P.S Chauhan, the then *Chauki* In-Charge, who repeated the same version as stated in the F.I.R. Except the police personnel, no public witness was present and supported the prosecution version. The entire criminal proceeding is being concocted by the local police only to save themselves from the mass demand made by the said committee. On the basis of the charge-sheet, the learned Magistrate has taken cognizance, which is unjustified and it is also an abuse of process.

7. One Sri Brijendra Singh has given a reminder to the Chief Minister, State of UP. regarding bad administration and corruption of local police, in which it is clarified that three family members lost their lives due to loose administration and negligence of local police of Loni. The complaint was also moved before the National Human Rights Commission and notices were issued to the Chief Secretary and D.G.P, U.P. Since there is not a single evidence against the applicants regarding commission of the alleged offence/crime, therefore, the entire criminal proceedings initiated against the applicants is wholly illegal and is an abuse of process.

8. From the perusal of the F.I.R and the relevant documents, no offence under the aforesaid Sections are made out, therefore the charge-sheet and the entire criminal proceedings in Case Crime No. 881 of 2001 – *State Vs. Tek Chand & others* in the aforesaid Sections, Police Station Loni, District Ghaziabad, pending in the Court of A.C.J.M. 5th, Ghaziabad be set aside.

9. All the relevant papers have been annexed with the affidavit.

10. From the side of respondents a counter affidavit has been filed against the contentions and prayer of the application, in which allegations of the applicants made in the application and the affidavit have been denied and it has been submitted that the incident had taken place at the police out post Banthala, P.S Loni, Ghaziabad, on 02.12.1999 for which an F.I.R under Sections 147, 148, 149, 307, 352, 436 I.P.C and Section 7 Criminal Law Amendment Act was registered at P.S Loni, Ghaziabad in respect of the offence committed by the accused persons. In connection of the said offences eight persons were arrested on the spot and another persons managed to escape. In the aforesaid incident the vehicles belonging to the police personnels, Government property was set on fire by the accused persons. After completion of the investigation, a charge-sheet has been submitted. The accused-applicants have not filed the entire records, which are collected during the course of investigation, which amounts to concealment of material facts from the Hon'ble Court and as such the present application is liable to be rejected.

11. Apart from this, the applicants have remedy to raise all the points before the concerned court at the time of framing of charge, which can easily be decided there. In view of availability of alternative remedy before the trial court, the present application is not maintainable and is liable to be rejected. If a lawful meeting is held, the Police has nothing to do, but since the mob gathered there at the instance of the applicants and other persons, took the law in their own hands by setting ablaze the Government property, the present action has been taken in accordance with law.

12. It is wrong to say that the police has lodged a false and frivolous report and has also set the articles on fire. There are as many as seven witnesses of the facts. The news items are not the substantial piece of evidence, hence, no reliance can be placed on the same.

13. The F.I.R has been lodged against those persons, who have taken law in their own hands without any ill-will or *malafide* intention.

14. The contention of para 12 of the affidavit is totally false and denied. In fact the government records, such as case diary, wireless set etc. have been damaged by the miscreants. It is also wrong to say that the Police himself has destroyed the old vehicles. There is nothing on record before this Hon'ble Court to substantiate the contents of the application. The statutory right of hearing may be afforded by the applicants at the time of framing of charge.

15. The accused persons have failed to appear before the concerned court, hence, non-bailable warrants were issued against them in accordance with law.

16. The incident which has taken place at Police out post Banthala, P.S. Loni, District Ghaziabad has been witnessed by the Police Party and their statements have also been recorded.

17. In view of the submission of the charge-sheet, the alleged reminder was of no avail. At the time of incident the applicants were also the member of unlawful assembly who in furtherance of common object have committed the offence in question and they cannot escape their liability of being prosecuted. In view of availability of alternative remedy before the trial court at the time of framing of charge, the present application is premature and is liable to be dismissed.

18. No rejoinder affidavit has been filed by the applicants.

19. The learned counsel for the applicant and learned A.G.A have already advanced their arguments.

20. It has been averred by the learned counsel for the applicants that there is no injury to any of the Police Personnel. In this regard it is argued by the learned A.G.A that to constitute an offence under Section 307 I.P.C, there is no need of injury.

21. Section 307 I.P.C is as under:

“307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such

circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to 1[imprisonment for life], or to such punishment as is herein before mentioned. Attempts by life convicts.—When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.

Illustrations :-

(a) A shoots at Z with intention to kill him, under such circumstances that, if death ensued. A would be guilty of murder. A is liable to punishment under this section.

(b) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(c) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section, and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of 3[the first paragraph of] this section.”

22. According to this Court, injury is not necessary. If an attempt to kill a person is made, the same is also sufficient to attract Section 307 I.P.C. In this case from the evidence on record, it has been *prima facie* established that the applicants and the mob tried their best to damage the property, to cause injuries to the Police personnels, but if the Police personnels any how managed to escape, the same would not absolve the applicants from their criminal liability in the eyes of Law.

23. If any *dacoity*, murder and rape had taken place, a complaint could be made to the Higher Authorities for taking departmental action against the responsible policemen which had already been made and *Panchayats* have already been held. Demands had already been sent.

The matter has already been in the knowledge of Higher Police and Executive Authorities. Under Article 19 of the Constitution of India, a peaceful demonstration is permissible, but in the garb of peaceful demonstration, one cannot take law in his own hand. If Police did not take action or the action taken by the Police was not satisfactory, the applicants had right to raise the same through their Political representatives in Legislative Assembly and Council or in High Court or the Apex Court. It is nowhere mentioned that any permission was taken from the local authorities for the alleged gathering or meeting. It is true that the news of the News Papers are not the authentic proof of any fact. It is mere hearsay evidence which are not admissible as held in ***Joseph M. Puthussery Vs. T.S. John, AIR 2011 S.C. 906, Laxmi Raj Shetty Vs. State of T.N AIR 1988 S.C. 1274.***

24. There is no *prima-facie* proof that the Police personnels themselves set ablaze fire and damaged the alleged properties. It appears that the applicants forgot that any such demand could be made in right way. There are documentary and oral evidence on record to *prima-facie* establish the guilt of the applicants. When all the influential political and social persons were involved in the matter, it is beyond imagination that any public person would come forward in support of the Policemen. In such a circumstance when there is only evidence of Police personnels, the same would be considered as to whether it is cogent, credible and reliable or not. In such a circumstance, evidence of public persons cannot be sought for.

25. In ***Pramod Kumar Vs. State (NCT) of Delhi, AIR 2013 SC 3344, Govindaraju @ Govinda Vs. State by Sriramapuram Police Station and another AIR 2012 SC 1292***, it has been held that the testimony of Police personnels should be treated in the same manner as testimony of any other witness. There is no principle of law that without corroboration by independent witnesses the testimony of police personnels cannot be relied on. The presumption that a person acts honestly applies as much in favour of a police personnel as of other persons and it is not a proper judicial approach to distrust and suspect them without good reasons. As a rule it cannot be stated that Police officer can or cannot be sole eye witness in criminal cases. Statement of Police Officer can be relied upon and even form basis of conviction when it is reliable, trustworthy and is preferably corroborated by other evidence on record.

26. This application has been moved under Section 482 Cr.P.C, which is as under:-

“482. Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

27. From the above it is very much clear that a High Court can exercise its inherent power only to give effect any order under this Code or to prevent abuse of the process of any court or otherwise to secure the ends of Justice.

28. The powers under Section 482 Cr.P.C cannot be liberally exercised and it has to be sparingly exercised, in cases, there is a dire need of exercise of this power.

29. In ***CBI Vs. Ravi Shankar Srivastava, AIR 2006 SC 2872*** it is held that while exercising jurisdiction under Section 482 Cr.P.C, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on reasonable appreciation of it accusation would not be sustained. That is the function of trial judge. The same reason and ground has been taken by the State through counter affidavit.

30. In ***Kamal Shivaji Pokarnekar Vs. State of Maharashtra, AIR 2019 SC 847***, it has been held that the correctness of the allegations against accused has to be decided only in trial. Criminal complaints cannot be quashed at initial stage of issuance of process only on ground that allegations made therein appear to be of civil nature.

31. In ***Dhruvaram Murlidhar Sonar Vs. State of Maharashtra, AIR 2019 SC 327***, it has been held that the expression “abuse of process of law” or “to secure the ends of justice” do not confer unlimited jurisdiction on High Court.

32. In ***State of Bihar Vs. P.P Sharma, 1991 CrLJ 1438/ 1448 SC*** it is held that the allegations of *malafide* against the informant based on the facts after the lodging of the FIR are of no consequence and cannot be the basis of quashing the proceedings. Simply because the IO, while acting *bonafide*, ruled out certain documents as

irrelevant, it is no ground to assume that he acted *malafide*. In the case in hand, the applicants have blamed the IO that he has not investigated properly the old vehicles were set on fire by the policemen and not by the applicants which cannot be decided under section 482 Cr.P.C.

33. In ***Kaptan Singh Vs. State of U.P, AIR 2021 SC 3931***, it is held that if petition under section 482 Cr.P.C was at the stage of FIR, in that case the allegations in FIR/complaint only are required to be considered and it has to be considered as to whether a cognizable offence is disclosed or not. However, thereafter when statements are recorded, evidence is collected and charge-sheet is filed after conclusion of investigation/ inquiry, matters stands on different footing and court is required to consider material/evidence collected during investigation. Even at this stage also the High Court is not required to go into merits of the allegations and / or enter into merits of the case as if High Court is excising appellate jurisdiction. In the cited case the High Court quashed the criminal proceedings even after the submission of the charge-sheet and even magistrate had taken cognizance. The Apex court held that the High Court did not take into consideration material collected during investigation/ inquiry and even statements recorded. The order of High Court regarding quashing the proceedings of the criminal case was set aside. Similarly in this case, the IO has submitted the charge-sheet long ago after collecting the oral and documentary evidences and the concerned court after taking cognizance has also issued the process against the applicants. According to this court the

principle laid down in this case is fully applicable in the case in hand.

34. On the basis of the above discussion, this Court is of the considered view that the questions raised in the present application cannot be decided by this Court under Section 482 Cr.P.C.

35. After investigation, a charge-sheet has been submitted against the applicants, they are summoned in due course of law. They have to face the trial. The trial court has to decide the case according to the evidence adduced by the prosecution and the defence. The proceeding under Section 482 Cr.P.C is not an alternative remedy of the trial. When there was enough material before the magistrate for the purposes of issuing process, the accused is not entitled to challenge that order under this section. In this application it is not denied that the properties were not damaged and the vehicles etc. were not set ablaze. Therefore, the High Court cannot exercise its power under section 482 Cr.P.C if the *prima-facie* offence has been made out on the basis of the allegations made in the complaint without going into the truth or otherwise of those allegations. The truthfulness or otherwise of the allegations made in the complaint, cannot be dealt with at this stage. If some offence is made out on a bare perusal of the complaint or FIR, then such a complaint or FIR cannot be quashed by invoking inherent jurisdiction under section 482 of the code. The sufficiency of evidence or material cannot also be gone into, at this stage. In a proceeding under this section, it is not open to the High Court to go into the question of fact. It is settled

law that the High Court in exercise of its inherent jurisdiction would not make any roving inquiry into the questions of facts and record any findings. The High Court will not enter into inquiry of disputed facts and thereafter hold in favour of the accused.

36. Thus this application under Section 482 Cr.P.C is devoid of merit and is liable to be dismissed accordingly.

ORDER

37. The application under Section 482 Cr.P.C is accordingly dismissed. Stay order, if any, stands vacated.

38. Let a copy of this order be sent to the Trial Court to proceed with trial in accordance with law.

Order Date :- 08.11.2023

Vinod.

[Umesh Chandra Sharma, J.]