

Court No. - 90

Case :- APPLICATION U/S 482 No. - 21551 of 2023

Applicant :- Satish Chand Dharni And Another

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

Counsel for Applicant :- Amit Singh, Sunil Kumar Singh

Counsel for Opposite Party :- G.A., Anurag Vajpeyi, Praveen Kumar Singh

Hon'ble Dinesh Pathak, J.

1. Heard learned counsel for the applicants, learned counsel for Opposite Party No. 2, learned AGA and perused the record.

2. The present applicants have invoked the inherent power of this Court under Section 482 CrPC beseeching the quashing of cognizance/summoning order dated 11.11.2022, charge sheet dated 12.10.2022, bailable warrant dated 15.2.2023, non-bailable warrant dated 26.4.2023 as well as entire criminal proceeding of Complaint Case No. 224936 of 2022 arising out of the Case Crime No. 7 of 2022, under Sections 498A, 323, 504, 506 and 354 IPC, Police Station Chetganj, District Varanasi pending before Additional Civil Judge (J.D.) IInd/Judicial Magistrate, Varanasi.

3. Opposite Party No. 2, having been aggrieved with her father-in-law and brother-in-law, has lodged an FIR being Case Crime No. 7 of 2022 dated 23.1.2022 levelling allegation of harassment, demand of dowry and applying criminal force intending to outrage her modesty.

4. Learned counsel for the applicants, while assailing the charge-sheet and the cognizance order, has submitted that false and malicious prosecution has got been instituted by elder son of applicant No. 1 through his wife (respondent No. 2) just to exert pressure upon the present applicant No. 1 so that he may come to the compromising condition qua distribution of share in property between the siblings. It is further submitted that dispute arose and is stemming from the pharmacy shop which is presently in the possession of the present applicants. The story, as has been portrayed in the FIR against the applicant No. 1 (father-in-law), is manifestly incorrect. Considering his age and reputation, the allegation of outraging the modesty of Opposite Party No. 2 and thrashing her is improbable. By stretch of any imagination, no case

could not made out against the present applicants for the demand of dowry and molestation. Conversely, Opposite Party No. 2, in collusion with the elder son of applicant No. 1, has deliberately initiated malicious prosecution with the aim of securing a larger share in the property, particularly the pharmacy shop, which is the bone of contention.

5. Per contra, learned AGA as well as Opposite Party No. 2 have vehemently opposed the submissions as advanced by the learned counsel for the applicants and supported the charge sheet as well as cognizance/summoning order passed by the court concerned. It is contended by learned counsel for Opposite Party No. 2 that after the demise of mother-in-law in the year 2016, the behaviour of the father-in-law (applicant No. 1) became objectionable and abusive. Opposite Party has informed the police, previously, as well qua conduct of the applicant No. 1. It is further contended that in the facts and circumstances of the present case, no interference is warranted in exercise of inherent jurisdiction of this Court under Section 482 CrPC, therefore, instant application is liable to be dismissed being misconceived and devoid of merits.

6. Having considered the rival submissions advanced by the learned counsel for the parties and perusal of record, it is manifested that Opposite Party No. 2 has unequivocally narrated her plight owing to objectionable behaviour of the applicant No. 1. As per FIR case, since the date of marriage 3.2.2005, applicant No. 1 was harassing Opposite Party No. 2 for demand of dowry. Applicant No. 1 has raised objection with respect to the legitimacy of the birth of his elder son (husband of Opposite Party No. 2) being born from his loin/conjugal union with his wife. He was throughout abusive to his wife (mother-in-law of Opposite Party No. 2). The allegation has been made against applicant No. 2 (brother-in-law) that he has throughout supported his father in his overt acts. Twice complaints have been made by Opposite Party No. 2 to the police personnel owing to the objectionable conduct of the applicant No. 1, however, after their intervention, problem was subsided and the applicant No. 1 was given warning to toe the line. Specific allegation of molestation and outraging the modesty of Opposite Party No. 2 has been levelled against the applicant No. 1 in the FIR. All the family members including Opposite Party No. 2 are residing in the shared house. Applicant No. 1 has broke the door of the bathroom intending to see Opposite Party No. 2 while taking bath, however, after police intervention he has installed door. On 26.10.2016, applicant No. 1 has in appropriately held the hand of Opposite Party No. 2 with bad intention. While she

pushed and scolded him for his conduct, he hit on her head through a lock inflicting severe injury. On the complaint made to police qua such incident, he had been called upon by police where he had tendered apology and assured that, in future, he will not repeat such conduct. Thereafter, Opposite Party No. 2 has withdrawn her complaint. At later stage, he and her brother-in-law have regressed to objectionable behaviour and started misbehaving with Opposite Party No. 2. He has shown inappropriate gesture in naked condition only wearing brief in absence of her husband. Specific allegation attributing to the applicant No. 1 has been levelled, however, Applicant No. 2 has been shown to be a supporting person in the overt act committed by the applicant No. 1.

7. In the facts and circumstances of the present case, as mentioned in the present FIR, prima facie, the complicity of the present applicant in the commission of the crime cannot be ruled out. The innocence of the present as is being tried to put forward by the learned counsel for the applicant on the pretext of property dispute and getting larger share in the property, is a matter of scrutiny which can be adjudicated upon more appropriately by the learned trial court after appraising evidence on record adduced by the parties. At this juncture, in exercise of inherent jurisdiction, under Section 482 CrPC. This Court is not expected to conduct a mini trial to examine the innocence of the present applicant in the light of the factual aspect of the matter. Neither I find any abuse of the process of law in the proceeding drawn against the present applicants nor there is any justifiable ground in order to pass an order to secure the ends of justice in exercise of inherent jurisdiction. The instant application moved by the present applicants, prima facie, appears to be misconceived and devoid of merits. The applicants still have an opportunity to defend their case before the trial court. Record reveals that learned counsel for the applicant has raised disputed question of fact qua involvement of present applicant in the incident in question.

8. In exercise of inherent power under Section 482 Cr.P.C., this Court is not expected to analyze the factual evidence which is to be placed before the trial court. The power conferred under Section 482 Cr.P.C. is very specific and wide to secure the ends of justice or to prevent the abuse of the process of any Court or to make such orders as may be necessary to give effect to any order under this Code. No provision of this Code is deemed to limit or effect such inherent power of the High Court.

9. 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; Trisuns Chemical Industry Vs. Rajesh Agarwal and Ors. : (1999) 8 SCC 686 3; M. Krishnan Vs. Vijay Singh & Anr. : (2001) 8 SCC 645; 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; Anand Kumar Mohatta and Anr. Vs. State (NCT of Delhi), Department of Home and Anr. : (2019) 11 SCC 706 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 scrutinise the complaint/FIR/charge-sheet in deciding whether the rarest of the rare case is made out to scuttle the prosecution in its inception.

10. In the case of **Gian Singh vs. State of Punjab, (2012) 10 SCC 303**, Hon'ble Supreme Court has made the following observation in Paragraph 61 which is quoted herein below :-

"61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or an FIR or a complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plentitude with no statutory limitation but it has to be exercised in accord with the guideline en-grafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court."

11. In Criminal Appeal No. 675 of 2019 arising out of **SLP (Crl.) No. 1151 of 2018, Mohd. Allauddin Khan v. State of Bihar and others, 2019 (6) SCC 107**, the Apex Court has held that the High Court had no jurisdiction to appreciate the evidences of the proceedings under Section 482 Cr.P.C. because where there are contradictions or the inconsistencies in the statements of the witnesses, is essentially an issue relating to appreciation of evidences and the same can be gone into by the Judicial Magistrate during trial, when the entire evidence is adduced by the parties. The same view has also been reiterated in judgment dated 31.07.2019 passed by Apex Court in Criminal Appeal No.1082 of 2019, arising out of **SLP (Crl.) No.10762 of 2018, Chilakamarthi Venkateswarlu and Another v. State of Andhra Pradesh and Another.**

12. In the case of **Priti Saraf & anr. Vs. State of NCT of Delhi & anr. Criminal Appeal No(s). 296 of 2021 (Arising out of SLP(Crl.) No(s). 6364 of 2019] (judgment dated March 10, 2021) : 2021 SCC Online SC 206** the Apex Court while considering the powers under Section 482 Cr.P.C. has held as

follows:

"23. It being a settled principle of law that to exercise powers under Section 482 CrPC, the complaint in its entirety shall have to be examined on the basis of the allegation made in the complaint/ FIR/charge-sheet and the High Court at that stage was not under an obligation to go into the matter or examine its correctness. Whatever appears on the face of the complaint/FIR/charge-sheet shall be taken into consideration without any critical examination of the same. The offence ought to appear ex facie on the complaint/FIR/charge-sheet and other documentary evidence, if any, on record.

13. The scope and ambit of the inherent jurisdiction of the High Court under Section 482 CrPC has been examined in detail by Hon'ble Apex Court in **State of Haryana and Others Vs. Bhajan Lal and Others, (1992 Suppl (1) SCC 335)**. The relevant para is mentioned hereunder:-

"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 channelised 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 non-cognizable 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 on 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."

14. It has been further elucidated recently by Hon'ble Apex Court in **Arnab Manoranjan Goswami Vs. State of Maharashtra and Others, 2020 SCC Online SC 964** where jurisdiction of the High Court under Article 226 of the Constitution of India and Section 482 CrPC has been analysed at great length.

15. Further, in the case of **M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others** reported in **AIR 2021 SC 1918**, Full Bench of the Apex Court while considering the powers of quashing under Section 482 of the Criminal Procedure Code and/or Article 226 of the Constitution of India has illustrated the circumstances under which quashing of a criminal case can be done and/or interim order can be granted.

16. Therefore, the disputed defence of the accused cannot be considered at this stage. In absence of any of the grounds recognized by the Supreme Court which might justify the quashing of complaint or the impugned proceedings, the prayer for quashing the same is not sustainable in the eyes of law. I do not see any abuse of the court's process either. The summoning court has been vested with sufficient powers to discharge the accused even before the stage to frame the charges comes, if for reasons to be recorded it considers the charge to be groundless. Moreover, the applicants have got a right of discharge under Section 239 or 227/228 Cr.P.C., as the case may be, through a proper application for the said purpose and he is free to take all the submissions in the said discharge application before the Trial Court.

17. Having considered the rival submissions advance by learned counsel for the applicant and learned AGA and the material available on record, in the light of dictum of Hon'ble Apex Court as discussed above, no ground made out to consider the merits of the instant case. As such, prayer of quashing as made in instant application is hereby refused.

18. Accordingly, the present application under Section 482 CrPC is hereby **dismissed**.

Order Date :- 3.11.2023

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