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Neutral Citation No. - 2023:AHC:204893

Court No. - 78

Case :- APPLICATION U/S 482 No. - 27861 of 2023

Applicant :- Dulichand

Opposite Party :- State of U.P.

Counsel for Applicant :- Ghan Shyam Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh,J.

1. Heard learned counsel for the applicant-accused and learned A.G.A. for the State.
2. This application under Section 482 Cr.P.C. has been filed for quashing of the entire proceedings, including charge-sheet dated 10.05.2022, summoning order dated 22.08.2022 and Non-bailable Warrant order dated 02.02.2023 of Criminal Case No.24/1449/2022 (State vs. Dulichand), Case Crime No.87 of 2017, under Section 420, 467, 468, 471, 477A, 120-B IPC and Section 13(1)D, 13(2) Prevention of Corruption Act, P.S. Firozabad North, District Firozabad, pending in the Court of Additional Session Judge/Special Judge Prevention of Corruption, District Meerut.
3. Learned counsel submitted that applicant is not named in the first information report, which was lodged against Rajeev Diwakar and some unknown employees of Dr. Bheem Rao Ambedkar University, Agra. The main allegation of prosecution is that by tampering and making forgery in the chart of marks, the marks obtained by the co-accused Rajeev Diwakar in B.Sc. IIIrd year examination were increased in all the three subjects and a forged marks sheet was issued. Learned counsel submitted that

there is no evidence that applicant-accused was involved in the alleged forgery in charts or in issuance of alleged forged mark sheet. At the relevant time, the applicant-accused was not posted in the relevant section, which has to deal with the chart of marks or mark sheet. During investigation, the applicant-accused has been falsely implicated in this case on the basis of false information that in the year 1997, the applicant was working as Office Superintendent, chart room in-charge as well as 'Ank chart prabhari' in relation to B.Sc. 2nd and third year charts of the year 1997. The applicant was not involved in correction of marks after re-valuation and in fact the procedure of re-valuation was not existing in the year 1997. The applicant has never given any B.Sc. 2nd and third year charts to Prof R.D. Katara in the year 1996-1997. The first information report itself mentions that marks sheet of Rajiv Diwakar did not match with his corrected marks chart of B.Sc third year. The applicant was falsely implicated on false information that in the year 1997 applicant was involved in preparation issuing marks sheet of B.Sc examination of 1997 after re-valuation. The alleged discrepancy in marks of the co-accused rules out any organised act or conspiracy. The applicant has already retired from the service after rendering 35 years of unblemished service. The applicant was posted in chart room of examination department and his job was to prepare duplicate marks sheets. The key of lock of chart room used to remain under custody the Assistant registrar examinations. The applicant has never received charts to keep in chart room. It was further submitted that after 10 years of the declaration of result, the entire documents / charts had been kept in open area of the chart room. The chart room was under direct supervision of Assistant Registrar examination. The chart room has access of all departmental employees. The charts of 1997 B.Sc third year examination as well correction challans have been issued by the

Assistant Registrar examination department. Referring to facts of the matter it was submitted that liability of alleged forgery in question can not be attributed to the applicant-accused. The concerned charts of B.Sc from the year 1995 to 1997 were not available with the applicant. The applicant has been falsely implicated on the basis of presumptions and false information that applicant was Office Superintendent as well as chart room in-charge in the year 1997. The first information report has been lodged after 11 years of the retirement of applicant. Learned counsel has referred several other points, as mentioned in the affidavit filed in support of the application, and submitted that there was no occasion on the part of the applicant to deal with the charts of marks or to make any tempering in the marks of Rajiv Diwakar and that there is no evidence against the applicant. Referring to first information report, and statements of witnesses examined during investigation, it was submitted that no prima facie case is made out against applicant-accused and that impugned proceedings are nothing but abuse of the process of the Court and thus, the impugned proceedings are liable to be quashed.

4. Per contra, learned AGA has opposed the application and submitted that during investigation, it was found that at the relevant time the applicant was posted and working as In-charge of chart room and that in conspiracy with Prof R.D. Katara and co-accused Rajeev Diwakar, the marks obtained by the co-accused Rajeev Diwakar in B.Sc IIIrd year examination were increased in all the three subjects by making forgery in charts of marks and a forged marks sheet was issued. There is evidence and letter of University authorities that at the relevant time, the applicant-accused was posted in the relevant section (in-charge chart room) and the attending facts and circumstances of the cases

show that applicant-accused was involved in forgery and tampering of the marks of co-accused Diwakar for ulterior motive.

5. I have considered rival submissions and perused the record.

6. The legal position on the issue of quashing of criminal proceedings is well-settled that the jurisdiction to quash a complaint, FIR or a charge-sheet should be exercised sparingly and only in exceptional cases. However, where the allegations made in the FIR or the complaint and material on record even if 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, the charge-sheet may be quashed in exercise of inherent powers under Section 482 of the Cr.P.C. In well celebrated judgment reported in **AIR 1992 SC 605 State of Haryana and others Vs. Ch. Bhajan Lal**, the Supreme Court has carved out certain guidelines, wherein FIR or proceedings may be quashed but cautioned that the power to quash FIR or proceedings should be exercised sparingly and that too in the rarest of rare cases. It is well settled that High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding unless the allegations contained, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence. The inherent powers for the purpose of quashing proceedings have to be exercised very sparingly. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. Thus, there is no controversy about the legal proposition that in case a prima facie case is made out, the FIR or the proceedings in consequence thereof cannot be quashed.

7. In the instant matter, perusal of record shows that though the applicant-accused was not named in the first information report but as per prosecution, during investigation, it was found that at the relevant time in the year 1997 the applicant was posted and working as in-charge of chart room. The letter issued by the concerned authority of the University support said allegation. In charge sheet it has been mentioned that during investigation it was found that in conspiracy of applicant with Prof R.D. Katara and co-accused Rajiv Diwakar, the marks obtained by the co-accused Rajeev Diwakar in B.Sc IIIrd year examination were enhanced in all the three subjects by making forgery in charts of marks and a forged marks sheet was issued and that on the strength of said forged marks sheet, the co-accused has obtained job of Assistant teacher. The case of applicant-accused that at the relevant time he was not posted as in-charge of chart room or not dealing with issuance of marks sheet can not be accepted at this stage by disbelieving the prosecution version, which is supported by documentary evidence. Thus, whether at the relevant time, applicant-accused was posted in the relevant section (in-charge chart room) and dealing with the issuance of the marks-sheets and what was the role of applicant-accused, can only be decided after evidence is led before the trial Court. Considering the material collected during investigation, it can not be said that no prima facie case is made out against the applicant.

8. At this stage it would be pertinent to refer case of State of Orissa v. Saroj Kumar Sahoo, wherein Apex Court has observed that probabilities of the prosecution version cannot be analysed at this stage. Likewise, the allegations of mala fides of the informant are of secondary importance. The relevant passage reads thus:

“11. ... It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be

quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with.”

9. In proceedings under section 482 CrPC it is not desirable for the Court to hold a full-fledged inquiry or to appreciate the evidence, collected by the investigating agency to find out whether the case would end in conviction or acquittal. The Supreme Court in the case of *M.N. Ojha v. Alok Kumar Srivastav* reported in (2009) 9 SCC 682 has held that interference by the High Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure can only be where a clear case for such interference is made out. Frequent and uncalled for interference even at the preliminary stage by the High Court may result in causing obstruction in progress of the inquiry in a criminal case which may not be in the public interest. But at the same time the High Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no fair minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint.

10. The Supreme Court in the case of *CBI v. Arvind Khanna* reported in (2019) 10 SCC 686 has held as under :

“17. After perusing the impugned order and on hearing the submissions made by the learned Senior Counsel on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under 29 Section 482 CrPC, the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant CBI, and the defence put forth by the respondent, led us to a conclusion that the High Court has

exceeded its power, while exercising its inherent jurisdiction under Section 482 CrPC.

18. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance of by the competent court, is completely incorrect and uncalled for.”

11. Thus, it is no more *res integra* that exercise of power under Section 482 CrPC to quash a criminal proceeding is only when an allegation made in the FIR or the charge sheet do not constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of process of any Court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the Court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is equally settled that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a *prima facie* case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding. As noted in the case of *State of Haryana vs. Bhajan Lal* (supra), power of quashing of first information report or proceedings should be exercised sparingly and with circumspection and that too in the rarest of rare cases. In case of *Rupan Deol Bajaj v. K.P.S. Gill*; reported in (1995) SCC (Cri) 1059, *Rajesh Bajaj v. State of NCT of Delhi*; reported in (1999) 3 SCC 259 and *Medchl Chemicals & Pharma (P) Ltd. v. Biological E Ltd. & Ors*; reported in 2000 SCC (Cri) 615, the Apex Court clearly held that if a *prima facie* case is made out disclosing the ingredients of the offence, Court should not quash the complaint. However, it was held that if the allegations do not constitute any offence as alleged and appear to be patently absurd and improbable, Court should not hesitate to quash the complaint. The

note of caution was reiterated that while considering such petitions the Courts should be very circumspect, conscious and careful.

12. In the instant case in view of allegations levelled against the applicant and perusing the material collected during investigation, it can not be said that no prima facie is made out against the applicant. The submissions raised by learned counsel for the applicants call for determination on questions of fact which may be adequately discerned either through proper investigation or which may be adjudicated upon only by the trial court and even the submissions made on points of law can also be more appropriately gone into only by the trial court.

13. In view of aforesaid, no case for quashing of impugned proceedings is made out and thus, the prayer the prayer to quash the impugned proceedings/ charge-sheet/summoning order is hereby refused. However, the applicant would be at liberty to move an application for discharge at appropriate stage in accordance with law and to raise his pleas before the trial Court.

14. So far the impugned order dated 02.02.2023, by which non-bailable warrants have been issued against the applicant, is concerned, it is directed that in case applicant-accused surrenders before the Trial court within a period of two weeks from today and applies for bail, his bail application shall be considered and decided expeditiously in accordance with law. For a period of two weeks from today or till the applicant-accused surrenders before the Trial Court, whichever is earlier, no coercive action shall be taken against the applicant-accused.

15. With aforesaid observations, the application under Section 482 CrPC is disposed of.

Order Date :- 27.10.2023

Neeraj