

Court No. - 78

Case :- APPLICATION U/S 482 No. - 28538 of 2023

Applicant :- Bijendra Pal Rana

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

Counsel for Applicant :- Saurabh Chaturvedi, Sr. Advocate

Counsel for Opposite Party :- G.A., Anvir Singh

Hon'ble Raj Beer Singh, J.

1. This application under Section 482 Cr. P. C. has been filed by the applicant for quashing of entire proceedings, including charge-sheet and summoning order dated 10.3.2023, of S. T. No. 563 of 2023 (State Versus Bijendra Pal Rana), arising out of Case Crime No. 231 of 2021, under Section 323, 504, 342 I. P. C. and Sections-7/13 of Prevention of Corruption Act, 1988, Police Station-Sadar Bazar, district-Meerut, pending in the Court of Additional Sessions Judge / Special Judge, Special Court No. 1 (Prevention of Corruption Act), Meerut.

2. Heard Sri I. K. Chaturvedi, learned Senior Advocate, assisted by Sri Saurabh Chaturvedi, learned counsel for the applicant and Sri Shashi Dhar Pandey, learned A. G. A. for the State as well as learned counsel for the informant.

3. Learned Senior Advocate has submitted that the applicant is innocent and he has been falsely implicated in this case. There is no evidence against the applicant and that no prima facie case is made out against him. The applicant was working as Station House Officer of Police Station-Sadar Bazar, district-Meerut. The opposite Party No. 2 has lodged first information report against the applicant and Head Constable Manmohan Singh and three other unknown persons, under Sections- 323, 504, 342 IPC and section 7/13 of prevention of Corruption Act, alleging that he was apprehended by the police on the charge

of theft of a vehicle and he was confined in the lockup of the police station and that at the instance of applicant/accused, the informant was beaten with sticks and that he was coerced to pay Rs. 100,000/- and he was released only after he paid an amount of Rs.50000/- to Constable Manmohan. Learned Senior Counsel submitted that there is no such specific allegation that the applicant has made any demand of illegal gratification or that any amount was paid to the applicant/accused. The allegations made in the FIR are wholly false and in fact, on the day of alleged incident, the applicant was in Allahabad in relation to filing a counter affidavit in a criminal case. Learned Senior Counsel submitted that on 5.2.2021, a first information report was lodged by one Abdul Saddam regarding theft of a truck vide Case Crime number 16 of 2021 and in that matter after investigation, police have submitted final report. Later on, the Insurance Company has raised some grievances before the Senior Superintendent of Police, Meerut and thereafter on the direction of S. S. P., Meerut, the applicant has made further direction in Case Crime No. 16 of 2021. During further investigation, the applicant had called informant of that case namely Abdul Salam and truck owner Mohammed Imran and that they have disclosed that Imran had sold the said track to one Inshad against the consideration of Rs. 4,34,000/- in order to obtain monetary gains from the Insurance Company. They have further disclosed that the said stolen truck had already been dismantled and galvanized and a lead was received that Wiqar Aamir (informant of this case) deals in illegal trade of such stolen vehicles and thus, applicant/accused has merely directed his subordinates to locate the said Wiqar Amir and thus, he was called for investigation. It was submitted that in

order to exert pressure on police, he has lodged first information report of this case, making false and baseless allegations. The alleged recovery of Rs. 30000/- has been shown from the co-accused Constable Manmohan. No recovery has been shown from the applicant/accused. As per version of the informant, he was beaten by the police officials, but no injury report of the informant has been shown. The investigation of this case has not been conducted properly and charge-sheet has been submitted in a routine manner. On the day of alleged incident, the applicant/accused was not present in the police station, thus, the allegations levelled against the applicant are wholly false and improbable. The allegation that in telephonic call, co-accused Manmohan has made any conversation with applicant/accused regarding bribe from the informant, is wholly false.

4. Learned Senior Counsel further submitted that when the investigating agency has moved the matter for grant of sanction for prosecuting the applicant, the concerned Joint Secretary of the Government has observed that the alleged bribe amount was given to co-accused Manmohan and no recovery has been made from the applicant and thus, the further evidence is required for grant of sanction. Thereafter, no further investigation has been conducted and without any further evidence, sanction for prosecution of applicant has been granted and thus, the sanction is not valid.

5. Learned Senior Advocate has referred facts of the matter and the averments made in the affidavit and submitted that no prima facie case is made out against the applicant and that the instant proceedings are nothing, but abuse of the process of law and thus, the proceedings are liable to be quashed.

6. Learned Counsel for the informant has not opposed the application and submitted that he has lodged first information report of this case on the direction of senior officers of police department and that merely his signatures were obtained on the application and that he has not made any statement to the police. It is further submitted that the informant was never taken into custody by the applicant and that the applicant-accused has been falsely chargesheeted in this case.

7. Learned A. G. A. has opposed the application and submitted that the allegations made in the first information report and the material collected during investigation, makes out a prime case against the applicant-accused. Referring to the facts of the matter, it was submitted that while posted as Station House Officer of police station-Sadar Bazar, district-Meerut, the applicant has misused his power and process of law and illegally confined the informant without any evidence and he was tortured to pay bribe. Sufficient evidence has been collected against the applicant-accused and charge-sheet has been submitted on the basis of evidence. Statements of informant and other witnesses were referred and it was submitted that no case for quashing of the proceedings is made out.

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

9. 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.

10. In the instant matter, perusal of the record shows that the applicant is named in the FIR. At the relevant time, applicant-accused was posted as Station House Officer, Police station-Sadar Bazar, district-Meerut. There are allegations in the first information report that the informant was apprehended from his house on the charge of theft of a vehicle and he was brought to the Police Station-Sadar Bazar, district-Meerut and there applicant has abused and threatened him and he was beaten by police officials and confined in the lockup. It was further alleged that the applicant has asked the informant to talk with constable Manmohan by threatening that he would also be

severely beaten like Imran. Thereafter, constable Manmohan has told the applicant that Station House Officer is a greedy person and he is demanding for Rs. 1,00,000/- for his release. The informant has further alleged that he has got arranged Rs. 40,000/- from his relative Sonu and he was having Rs. 10000/- with him and thus, the amount of Rs 50,000/- was given to Constable Manmohan. At the same time Constable Manmohan has told the applicant/accused that informant would pay Rs. 50,000/- by the next day by 3:00 P. M. and only thereafter the informant was released. Thereafter, on the next day the informant reported the matter to the S. S. P. So far as this plea is concerned that on the day of incident, the applicant was in Allahabad, merely it has been shown that on 27.8.2021 the applicant has made an application to S. S. P., Meerut for going to Allahabad for filing of counter affidavit and he was granted permission on 28.8.2021 but there is no such categorical evidence that at the relevant point of time on 29.8.2021, the applicant accused was present in Allahabad. Even otherwise, the said plea of alibi cannot be considered at this stage. As stated above, the probability and reliability of prosecution version cannot be analysed at this stage. Considering the allegations made in the first information and the material collected during investigation, it cannot be said that no prima facie case is made out against the applicant. Merely because now the informant is back tracking from his version, as mentioned in the counter affidavit, it would not be sufficient to brush aside the material collected during investigation. In fact, the attending facts and circumstances show that now the informant is deliberately backtracking from his version due to ulterior motive.

11. 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.”

12. 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.

13. 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.”

14. 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.

15. 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 adequately 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.

16. In view of above, no case for quashing of proceedings is made out. However the applicant-accused would be at liberty to move an application for discharge before the trial court at the appropriate stage in accordance with law and may raise his pleas before the trial court.

17. With the aforesaid observations, this application under Section 482 Cr. P. C. is dismissed.

Order Date: 03.11.2023

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