

**Neutral Citation No. - 2023:AHC:220591**

**Reserved**

**Court No. - 78**

**Case :-** APPLICATION U/S 482 No. - 28102 of 2023

**Applicant :-** Ajai Rai And 4 Others

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

**Counsel for Applicant :-** Amar Nath Singh, Ashok Kumar Mishra

**Counsel for Opposite Party :-** G.A.

**Hon'ble Raj Beer Singh, J.**

1. Heard learned counsel for the applicants and Sri P.K. Giri, learned Additional Advocate General for the State.

2. This application u/s 482 Cr.P.C. has been filed with the prayer to quash the entire proceedings of special trial no. 7 of 2012, (State v. Ajai Rai & Ors.), arising out of case crime no. 76 of 2010, under Section 147, 148, 448, 511, 323, 504, 506, 120-B IPC, Section 7 of Criminal Law Amendment Act and Section 3(1) of U.P. Gangsters & Anti-Social Activities (Prevention) Act, P.S. Chetganj, District Varanasi, pending in the court of Special Judge (Prevention of Corruption Act), Court No. 1, Varanasi.

3. It has been argued by learned counsel for the applicants that applicants are innocent and no prima facie case is made out against the applicants. In this matter, the first information report was registered under Section 147, 148, 323, 504, 506 IPC against the applicants, which was lodged by informant Bhanu Pratap Singh but during investigation, the police have arbitrarily added the provisions of Gangsters Act and the charge-sheet was submitted under Section 147, 148, 448, 471, 323, 504, 506, 120-B IPC, Section 7 of Criminal Law Amendment Act and Section 3(1) of U.P. Gangsters & Anti-Social Activities (Prevention) Act (hereinafter referred to as 'Section 3(1) of the Act').

4. The main contention of learned counsel for the applicants is that in the first information report, there were absolutely no allegation regarding any

gang and the first information report was lodged by a private person and thus, in the said matter, police cannot submit the charge-sheet under Section 3(1) of the Act. For invoking the provisions of Section 3(1) of the Act, the informant has to be a police official. Referring to these facts, it was submitted that the trial of applicants Section 3(1) of the Act is against the provisions of law and thus, the impugned proceedings are abuse of the process of court and thus, liable to be quashed.

5. Learned A.A.G. has opposed the application and argued that during investigation, it was found that the applicants were members of the gang and thus, the provisions of Gangster Act were invoked and after due approval of the gang chart, the charge-sheet was submitted against the applicants. It was submitted that there is no illegality or perversity in submission of charge-sheet under Section 3(1) of the Act. In this connection, learned AAG has referred the provisions of Section 8 of the Act and placed reliance upon the case of **Sumit v. State of U.P. & Another** [Application u/s 482 No. 491 of 2020], decided on 05.03.2020.

6. It is further submitted that in this matter, the charge-sheet was submitted in the year 2011 and now nine prosecution witnesses have already been examined and thus, there is long and undue delay on the part of the applicants in filing the present application.

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

8. At the outset it may be seen that the first information report was lodged on 26.03.2010 and charge-sheet was submitted in the year 2011 and cognizance was also taken in the year 2011 but this application for quashing of proceedings has been filed in the year 2023 and thus, there is delay of about 12 years in filing the application under section 482 CrPC. Now the trial of the case is stated at advanced stage and nine witnesses have already been examined. Though no limitation period is prescribed for filing a petition under section 482 CrPC but nevertheless the same has to be filed within a reasonable period. It is apparent that there is long and

undue delay in filing of this application and at this stage of trial, it is wholly undesirable to quash the proceedings.

9. So far the merits of the matter are concerned, the perusal of record shows that the first information report was lodged for offences under section 147/148/323/504/506 IPC but during investigation police have invoked provisions of Gangster Act and after investigation, charge-sheet was submitted for the offence under section 147/148/448/511/323/504/506/120-B IPC, section 7 C.L. Act and section 3(1) of the Act. The only contention raised on behalf of the applicants is that the provisions of section 3(1) of the Act cannot be added during investigation of a case, which was lodged by a private person, as in the case under Gangster Act, the informant has to be a police official. It is correct that normally proceedings under Gangster Act are initiated by the police but no such provision could be shown, which bars addition of section 3 (1) of the Act during investigation of a case registered for the offences under Indian Penal Code, provided the requirements provided under the Gangster Act have been fulfilled. Similarly no legal provision could be shown that in a case under Gangster Act, the informant has necessarily to be a police official. There is no such contention that any mandatory provision of Gangster Act has not been complied with. Further, as observed above, the trial of the case is at advanced stage and the applicants are free to raise this contention before the trial court at the stage of final hearing and same may be more appropriately gone into by the trial court.

10. 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**, 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. 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. In the instant matter, there is no such plea that no prima facie case is made out. At this stage it would be pertinent to refer 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 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.

11. In the instant matter it is apparent that no case for quashing of impugned proceedings is made out and this application under section 482 CrPC is devoid of merit.

12. The application under section 482 CrPC is **dismissed**.

**Order Date :-21.11.2023**

Anand