

Neutral Citation No. - 2023:AHC:219965

Reserved on 03.11.2023

Delivered on 21.11.2023

Court No. - 88

Case :- APPLICATION U/S 482 No. - 28188 of 2023

Applicant :- Arvind Singh And 5 Others

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

Counsel for Applicant :- R.P.S. Chauhan,Prakash Chandra
Trivedi

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

1-Heard Mr. R.P.S.Chauhan, learned counsel for the applicants and Mr. Deepak Mishra, learned Additional Government Advocate representing the State.

2-This application under Section 482 Cr.P.C. has been filed by the applicants with a prayer to quash the summoning order dated 05.07.2023 and proceedings of complaint case no. 16233 of 2021 (Sangeeta Singh vs. Ritik Singh and others), under Sections 354, 392, 323, 506 I.P.C.,pending in the court of Additional Civil Judge (J.D.)-First/Judicial Magistrate, Jaunpur.

3-The brief facts of the case which are required to be stated are that opposite party no. 2-Sangeeta Singh moved an application under Section 156 (3) Cr.P.C. dated 24.09.2021 against the applicants, namely, Arvind Singh, Shishu Singh @

Kunwar Vikram Singh, Sawaley Singh, Pankaj Singh, Ajay Singh and Ritik Singh seeking direction to lodge first information report against them alleging inter-alia that on 01.04.2021 at about 08:00 pm, she was going to purchase some ornaments and clothes for the marriage of her son on motorcycle with her husband. As soon as they reached near railway crossing of Kuttupur bypass road, the accused persons who are domineer and goonda element, at the point of country-made pistol looted Rs.1,50,000/- which was kept in her purse and kidnapped her. Her husband and his companion namely Ketan Singh and Saroj Mali were beaten and driven away. It is also alleged that the accused persons forcibly took her away in Bolero vehicle, outraged her modesty, torn her clothes and blouse and also tried to commit rape on her. After harassing her mentally and physically, they left her at Jaunpur road. It is also alleged that when her husband, brother-in-law and Alok came to the spot in a Bolero vehicle, they have also damaged the car and broke the front and rear glasses of said vehicle and also snatches her mobile as well as ornaments worn by her. It is also alleged that since one of the accused Arvind Singh is a home-guard, therefore, he misusing his post used to harass her and her family members. Apprehension has also been raised that any untoward incident may happen with her and her husband at any time.

4- The learned Magistrate vide order dated 09.12.2021 treated the said application of the opposite party no. 2 as complaint and after recording the statement under Section 200 Cr.P.C. of the complainant/opposite party no. 2 and statement of Manoj

Kumar Singh and Sunil Kumar Singh under Section 202 Cr.P.C., summoned the applicants to face trial vide order dated 05.07.2023, which is the subject matter of challenge in the present application.

5- It is argued by learned counsel for the applicants that in the complaint, two persons namely Chetan Saini and Saroj Mali have been shown as the witnesses, but they have not been produced for recording their statement under Section 202 Cr.P.C. So far as witness Manoj Kumar Singh is concerned, he is husband of opposite party no. 2 and another person Sunil was not an eye-witness of the incident, therefore their statements are not reliable. It is next submitted that on 28.02.2017, the husband of opposite party no. 2 has filed Suit No. 216 of 2017 under Section 9 of C.P.C. for permanent injunction against Arvind Singh, Sawaley Singh and their fathers with regard to joint holding plots, which is still pending. Thereafter, he has filed a false application under Section 156 (3) Cr.P.C. dated 24.09.2021 against the applicants. Further other false and frivolous online IGRS complaints were moved on 09.03.2022, 28.03.2022 and 30.08.2022 against Arvind Singh. On 09.05.2022 complaint was also made against Vinod Singh, Arvind Singh, Sawaley Singh, Kamley Singh and Ajay Singh regarding encroachment over the plot. The proceedings under section 107 and 116 of Cr.P.C. against applicant nos. 3 and 5 were initiated on 31.03.2022. It is also argued that civil dispute has been given a colour of criminal case. Lastly, it is submitted that there are contradictions in the averment of the complaint and

statements under section 202 Cr.P.C. and 202 Cr.P.C. about the time of the incident, etc. therefore oral statements of the complainant and witnesses have been disbelieved by the Magistrate concerned, hence there was no cogent reason before the learned Magistrate for summoning the applicants to face trial.

6-Per contra, learned Additional Government Advocate for the State, upon instructions, pointed out that the applicants have a criminal history of Case Crime No. 158 of 2023, under Sections 194, 195, 201, 323, 419, 420, 442, 445, 447, 467, 468, 504 and 506 I.P.C., Police Station Khuthan, District Jaunpur, but the same has not been disclosed by the applicants. So far as merit of this case is concerned, learned Additional Government Advocate refuting the submissions advanced on behalf of the applicants, submitted that upon perusal of complainant as well as statements of witnesses under sections 200 and 202 Cr.P.C., the cognizable offence against the applicants is made out. Relying upon the judgments of the Apex Court in the case of **Tahsildar Singh Vs. State of U.P. AIR 1959 SC 1012** and **Rammi Vs. State of M.P. (1999) 8 SCC 649**, learned Additional Government Advocate submits that minor contradictions and trivial discrepancies are not always sufficient to discredit a witness. The learned Magistrate has not disbelieved the statements recorded under sections 200 and 202 Cr.P.C., therefore, merely due to some minor contradictions, the serious allegations of outraging the modesty of complainant, kidnapping and trying to commit rape on her as well as

beating her husband due to previous enmity and litigations can not be disbelieved at the stage of summoning the accused-applicants under Section 204 Cr.P.C. The criminal proceedings against the applicants cannot be said to be abuse of the process of the Court. Hence this application is liable to be dismissed.

7-Having examined the matter in its totality, I find that the grounds taken in the application reveal that many of them relate to disputed question of facts. Though the learned Magistrate, while passing summoning order dated 05.07.2023, has mentioned that there are some contradiction in the statement of the witnesses, but on perusal of the same, I find that the discrepancies as pointed out, can not said to be material contradictions and do not goes into the root of the matter so as to demolish the entire prosecution case.

8- It is well settled that minor discrepancies which do not shake the basis version of the prosecution should not be discarded. There can not be set pattern or uniform rule of human reaction or way of expression. So far as submission on behalf of the applicants that civil dispute has been given colour of criminal case, is concerned, I find that allegations against the applicants are not of pure civil in nature. So far as submission regarding false implication of the applicants due to ill motive is concerned, it would be relevant to note that the same is like a double edges weapon, which cuts both the side. Due to enmity a person can be implicated but simultaneously it is also possible to commit an offence due to

enmity, which is the subject matter of trial. If from the allegations made in the complaint, prima facie offence other than civil dispute is made out, there is no bar to initiate criminal proceedings in accordance with law. I also find that statement of the complainant and her witnesses has not been disbelieved by the learned Magistrate, hence the submission of the learned counsel for the applicants in this regard as noted above is not liable to be accepted. This Court is of the view that the appreciation of evidence is a function of the trial court. This Court in exercise of power under Section 482 Cr.P.C. cannot assume such jurisdiction and put an end to the process of trial provided under the law. It is well settled by the Apex Court in catena of judgments that the power under Section 482 Cr.P.C. at pre-trial stage should not be used in a routine manner but it has to be used sparingly, only in such an appropriate cases, where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceedings or where allegations made in complaint or charge-sheet, even if taken at the face value and accepted in entirety, do not prima facie disclose the commission of any offence against the accused. The disputed questions of facts and defence of the accused cannot be taken into consideration at this pre-trial stage, which can be more appropriately gone into by the trial court at the appropriate stage.

9- Needless to record and it being settled principle of law that the complaint in its entirety shall have to be examined on the basis of allegations made in the complaint without any critical examination of the same. At the stage of taking cognizance of

the case and summoning the accused, the court below is not required to go into the merit and demerit of the case. Genuineness or otherwise of the allegations cannot be even determined at the stage of summoning the accused.

10- This Court does not find that this case fall in a categories as recognized by the Apex Court for quashing the criminal proceeding of the trial Court at pre-trial stage. Considering the facts, circumstances and nature of allegations against the applicants in this case as noted above, the cognizable offence is made out. At this stage it would not be appropriate to adjudge whether the case shall ultimately end in conviction or not. Only prima facie satisfaction of the Court about the existence of sufficient ground to proceed in the matter is required. The impugned criminal proceeding under the facts of this case cannot said to be abuse of the process of the Court. There is no good ground to invoke inherent power under Section 482 Cr.P.C. by this Court.

11-In view of the above,the relief as sought by the applicants through the instant application is hereby refused.

12-This application under Section 482 Cr.P.C. lacks merit and is, accordingly, **dismissed**.

13-Copy of this order be sent to the complainant/opposite party no. 2 as well as to the concerned Court below for information within a week.

Order Date :- 21.11.2023

Ishrat/Saurabh