

Court No. - 88

Case :- APPLICATION U/S 482 No. - 28383 of 2023

Applicant :- Praveen Gupta

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

Counsel for Applicant :- Priya Tiwari, Kamlesh Kumar Tiwari, Yogesh Shukla

Counsel for Opposite Party :- G.A., Piyush Kumar Shukla

Hon'ble Sanjay Kumar Singh, J.

1-Heard learned counsel for the applicant, learned Additional Government Advocate for the State/opposite party no.1 and learned counsel for the opposite party no.2.

2-This application under Section 482 Cr.P.C. has been filed by the applicant to quash the charge-sheet dated 13.11.2022, cognizance/summoning order dated 16.06.2023 and proceedings of Criminal Case No. 13099 of 2023 (*State Vs. Praveen Gupta*) arising out of case crime no. 311 of 2022, under Sections 420, 448, 506 IPC, Police Station Babeena, District Jhansi pending in the court of Judicial Magistrate-II, Jhansi.

3-Brief facts of the case which are required to be stated are that Smt. Reena Gupta wife of Late Deepak Gupta lodged a First Information Report on 11.09.2022 against the applicant-Praveen Gupta and co-accused Anup Gupta for the alleged offence under Sections 420, 448 and 506 I.P.C. alleging inter-alia that after the death of her husband on 27.04.2021, she is living along with her minor son in her parental house and she is nominee in the different insurance policies taken by her husband during his life time. After the death of her husband, death claim amount Rs. 21 lac came in her account no. 500100312428291 of HDFC Bank, Branch Jhansi and account no. 96070100026718 of Prathma U.P. Gramin Bank, Branch Simrawari, BHEL. After the death of her husband, the applicant-Praveen Gupta who is her brother-in-law and posted in Matateela Jal Viddut Project had taken mobile of her husband and

was operating the same. The applicant- Praveen Gupta in a pre-planned manner with a view to cause irreparable loss to her and to grab her husband's money transferred the said amount through net banking, phone pay, etc. from her account to his account as well as to the account of his mother (mother-in-law of the applicant). On taking account statement from the Bank, she came to know about the cheating and fraud committed by the applicant-Praveen Gupta in collusion with co-accused Anup Gupta, who is his brother-in-law (*jija*). F.I.R. further alleges that apart from above mentioned amount, applicant Praveen Gupta has also misappropriated the goods of her husband's shop of worth Rs. 25 lac and has also taken a Brezza Car, pick-up vehicle and scooty of her husband in his custody. The applicant has also taken her all pass-books, cheque-books, ATM cards, PAN Card, Aadhar Card and other important documents and did not return, therefore, she is under apprehension that he can misuse the same. Allegation has also been levelled that she has also been deprived from the share of her husband in the house situated at BHEL, Simrawari.

4-It is submitted by learned counsel for the applicant that after the death of husband of opposite party no. 2, she wanted to marry with the applicant and also proposed the applicant but he was not ready, due to this reason she became annoyed and falsely implicate the applicant by lodging a false F.I.R. The mobile phone of the husband of the informant was not being used by the applicant. Deepak Gupta (husband of the informant) had taken a loan from Bajaj Finance Company which has been paid by the applicant after his death and school fee of son of the informant is also being paid by the applicant. In place of husband of the informant, name of her minor son through his natural guardian (Smt. Reena Gupta) has been mutated in revenue record. The applicant and his mother are ready to make fixed deposit of the amount in question in the name of minor son of the informant namely Lakshya but they are not willing to give the same to Smt. Reena Gupta. Lastly it is submitted that in case opposite party no. 2 is ready to accept the applicant's

proposal, he has no objection to execute the same.

5-Per contra, learned Additional Government Advocate for the State refuting the submissions advanced on behalf of the applicant submitted that upon perusal of F.I.R. and on the basis of the allegations made therein as well as material against the applicant, as per prosecution case, the cognizable offence against the applicant is made out. The criminal proceedings against the applicant cannot be said to be abuse of the process of the Court. Hence this application is liable to be dismissed.

6-Learned counsel for the opposite party no.2 reiterating the prosecution case submitted that the applicant after the death of husband of the informant adopting different *modus-operandi* has grabbed Rs. 21 lac of the opposite party no. 2 and goods of worth Rs. 25 lac of the shop of husband of the opposite party no. 2, hence, this application is liable to be dismissed. It is also submitted that the applicant is not sincerely willing to return the said amount to the opposite party no. 2 but just to mislead the Court mentioned in the application that he wants settlement.

7-Having examined the matter in its totality, I find that it is not in dispute that death claim amount as mentioned in the F.I.R. has been transferred in the account of applicant Parveen Gupta and his mother from the account of the informant through net banking and other electronic modes and till date, the said amount has not been returned to the informant by the applicant and his mother. It appears that applicant is not inclined to return the said amount as well as goods to the informant. The grounds taken in the application reveal that many of them relate to disputed question of fact. 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 to 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 First Information Report or charge-sheet and the materials relied in support of same, on taking their face value and accepting in their entirety do not 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.

8-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 applicant in this case, 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 be 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.

9-The relief as sought by the applicant through the instant application is hereby refused.

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

Order Date :- 26.10.2023

Shubham