

Court No. - 69

Case :- APPLICATION U/S 482 No. - 28658 of 2023

Applicant :- Dheeraj Kumar Sharma @ Dheeraj And Another

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

Counsel for Applicant :- Dileep Kumar Shukla, Mohit Singh

Counsel for Opposite Party :- G.A., Hridaya Lal

Hon'ble Samit Gopal, J.

1. List revised.

2. Heard Sri Mohit Singh, learned counsel for the applicant, Sri Sanjay Kumar Yadav, Advocate, holding brief of Sri Hridaya Lal, learned counsel for the opposite party no. 2, Sri Sanjay Kumar Singh, learned Additional Government Advocate for the State of U.P. and perused the record.

3. The present Criminal Misc. Application U/S 482 Cr.P.C has been filed by the applicants Dheeraj Kumar Sharma @ Dheeraj and Natthu Lal Sharma with the following prayers:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow the present Criminal Misc. Application and quash the entire proceedings of Complaint Case No.5918/2021, Smt. Tarawati vs. Natthu & others, under Section 302 1.P.C., Police Station Islamnagar, District Budaun, pending in the Court of Chief Judicial Magistrate, Budaun and the impugned order dated 16.03.2021 & summoning order dated 18.06.2022 passed by the learned Chief Judicial Magistrate, Budaun in the aforesaid complaint case as well as the impugned order dated 28.02.2023 passed by the learned Additional Sessions Judge/Special Judge, SC/ST(PA) Act, Budaun in Criminal Revision No. 138 of 2022 (Natthu Lal & others vs. State & another).

It is further prayed that this Hon'ble Court may be kindly be pleased to stay the further proceedings of Complaint Case No.5918/2021, Smt. Tarawati vs. Natthu & others, under Section 302 1.P.C., Police Station - Islamnagar, District Budaun, pending in the Court of Chief Judicial Magistrate, Budaun during the pendency of the present application before this Hon'ble Court and/or may pass such other and further orders which this Hon'ble Court may deem fit and proper in the facts & circumstances of the case, otherwise the applicants would suffer an irreparable loss and injury."

4. The facts arising out in the present matter are that previously the applicants had filed an Application U/S 482 Cr.P.C. No. 11492 of 2023 (Naththu Lal Sharma and another vs. State of

U.P. and another) for quashing of the entire proceedings of the trial court, summoning order dated 18.6.2022 and the order dated 28.2.2023 passed by the trial court with further prayer to stay the proceedings of the said case against the applicants. The said petition was taken up by this Court and was disposed of vide order dated 5.4.2023. The said order reads as under:-

"List revised.

Heard Sri Rahul Kumar, learned counsel for the applicants, Sri Sanjay Kumar Singh, learned counsel for the State and perused the record.

This application under Section 482 Cr.P.C. has been filed by the applicants- Naththu Lal Sharma and Deeraj Kumar with the prayer to allow this application and quash the entire proceeding as well as impugned summoning order dated 18.06.2022 in Case No. 5018 of 2021 (Smt. Tarawati Vs. Naththu etc.), under Section 302 I.P.C., Police Station Islamnagar, District Budaun pending in the Court of C.J.M., District Budaun and impugned order dated dated 28.02.2023 passed by Court of Additional Session Judge / Special Judge, SC / ST (P.A. Act), Budaun in Criminal Revision No. 138 of 2022 (Naththu vs. State of U.P. and another) with a further prayer that proceedings of the aforesaid case be stayed against the applicants.

After some arguments, learned counsel for the applicants states that the purpose of the applicants would suffice if an order is passed directing the trial court to decide the bail application of the applicants, as expeditiously as possible. He further states that although the prayer has been made for quashing of the charge sheet, cognizance order and the proceedings of the case but he does not press the same.

Learned counsel for the State has no objection of aforesaid arguments of learned counsel for the applicants.

In view of the above, the prayer for quashing of proceedings/cognizance order/charge sheet is dismissed as not pressed.

However, in view of the peculiar facts and circumstances of the case and looking to the limited prayer of learned counsel for the applicants, it is directed that if the accused-applicants surrender before the trial court and apply for bail within two weeks from today, the same shall be considered and decided expeditiously in accordance with law. Till the aforesaid period, no coercive action shall be taken against the applicants.

It is clarified that if the accused-applicants do not appear before the court concerned by the said date, the court concerned shall proceed against them in accordance with law.

The present application is disposed of."

5. The present application under Section 482 Cr.P.C. has been filed by the applicants stating therein that in compliance of the order dated 5.4.2023 the applicants surrendered before the trial court and moved their bail applications which were rejected after which they have been granted bail by this Court. It is argued that co-accused Hariom Sharma and Munna Lal filed a Criminal Misc. Application U/S 482 Cr.P.C. No. 19824 of 2023 (Hariom Sharma and another vs. State of U.P. and another) in which a co-ordinate Bench of this Court vide order dated 25.5.2023 passed an interim order in favour of the said applicants that till the next date of listing no coercive action shall be taken against them, copy of the said order has been placed before the Court which is annexure no. 3 to the affidavit. It is argued that as such looking to the subsequent event the present petition be entertained and be considered on its merit as the first petition filed on behalf of the applicants was not considered on its merit. Learned counsel has relied upon the Full Bench's judgement of the Apex Court in the case of ***Daryao and other vs. State of U.P. and others: 1961 SCC OnLine SC 21*** and relying upon para-26 of the same, it is argued that it has been held that a summary dismissal cannot be considered to be a dismissal on merits and does not create bar of res judicata. It is argued that as such present petition be heard on merits and be decided.

6. Per contra, learned counsel for the opposite party no. 2 opposed the prayer and the arguments of learned counsel for the applicants vehemently. It is argued that the present application is a second application under Section 482 Cr.P.C. for the same prayers which after arguments were given up by learned counsel for the applicants in the first application under Section 482 Cr.P.C. and then the argument was confined only for a specific relation which was granted. It is argued that as such maintainability of the present petition is not legal and the same cannot be considered and held maintainable despite the fact that certain co-accused approached this Court and their petition was entertained. It is argued that there is no fresh and new material in the present matter which would entitle filing and entertaining of subsequent petition after the first petition was disposed of that too on the request of learned counsel for the applicants after arguing it for sometimes and not pressing the prayers made therein. Learned counsel has relied upon the judgement of the Apex Court in the case of ***Bhisham Lal Verma vs. State of***

Uttar Pradesh and another: Special Leave Petition (Crl.) No. 7976 of 2023, decided on 30.10.2023 and while placing paragraph numbers- 10, 11 and 12 of the same, argued that the entire material was available to the accused/applicants at the time of filing of the first petition under Section 482 Cr.P.C. and they had made prayers for which the present repeat petition has been filed and as such on merits, on the facts of the case there is no fresh and new material available which would entitle them to file a fresh petition. It is argued that the present petition be thus dismissed.

7. Learned A.G.A. has also reiterated the arguments of learned counsel for the opposite party no. 2.

8. After having heard learned counsels for the parties and perusing the records, it is evident that the present petition is the second petition filed for the same relief. The material of challenge is the same which was present and available at the time of filing of the first petition under Section 482 Cr.P.C. The prayers are the same as were prayed for in the first petition. There is no change in circumstance or availability of fresh and new grounds on the facts of the case. The agitated ground that the petition of co-accused has been entertained by a co-ordinate Bench of this Court cannot be a fresh and new ground to entertain this petition since the first petition of the applicants was decided at a prior point of time i.e. 5.4.2023 and the order of co-accused persons is a subsequent order dated 25.5.2023. No fresh material on fact could be shown which could be said to be new material subsequent to disposal of the first petition under Section 482 Cr.P.C. The reading of the order passed in the first petition would go to show that the matter was argued for sometime after which learned counsel for the applicants gave up the said challenge on merits and made an alternative prayer which was accepted. The same thus would not entitle filing of a second petition on the ground that the petition of co-accused persons has been entertained by another Bench of this Court.

9. In view of the discussion made herein above, no good ground exists to entertain the present petition. The same is thus dismissed as not maintainable.

(Samit Gopal,J.)

Order Date :- 2.11.2023/Naresh