

Court No. - 4

Case :- APPLICATION U/S 482 No. - 40099 of 2023

Applicant :- Ahmad Hamid

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

Counsel for Applicant :- Shams Uz Zaman

Counsel for Opposite Party :- G.A.

Hon'ble Prakash Padia,J.

1. Heard learned counsel for the applicant, learned AGA for the State and perused the records.
2. The present application under Section 482 Cr.P.C. has been filed with the prayer to quash the entire criminal proceedings of case crime no. 45 of 2022, Case No. 1627 of 2023 (State Vs Ahmad Hamid and others) under Section 188, 269, 270, 171-H, I.P.C. and 3/4 Pandemic Act, 1887, Police Station Khekra, District Baghpat Pending in the court of C.J.M. District Baghpat in the interest of justice. Further prayer is made to quash the charge sheet dated 19.06.2022 and also cognizance order dated 18.04.2023 in case crime no. No. 45 of 2022, Case No. 1627 of 2023 (State vs Kuldeep @ Bittu and others) under Section 188, 269, 270, 171-H, I.P.C. and 3/4 Pandemic Act, 1887, Police Station Khekra, District Baghpat pending in the court judicial Magistrate District Baghpat.
3. It is argued by learned counsel for the applicant that identical controversy has already been decided by a Coordinate Bench of this Court vide judgement and order dated 03.03.2023 passed in Application Under Section 482 No.6606 of 2023 (Madan Bhaiyya @ Madan Gopal Vs. State of U.P. and another). The order dated 03.03.2023 reads as follows :-

"1. Heard Sri Syed Mohammad Nawaz, learned counsel for the petitioner and Sri Ratnendu Kumar Singh, learned AGA and perused the record.

2. The present petition under Section 482 Cr.P.C. has been filed seeking quashing of the summoning/cognizance orders dated 29.3.2022 as well as charge sheet dated 6.3.2022 and the entire proceedings of Criminal Case No.2561 of 2022 (State Vs. Madan Bhaiyya and others), arising out of Case Crime No.81 of 2022, under Sections 171-F, 188, 269 and 270 IPC, Section of Epidemic Act, 1987 and Section 51 of the Disaster Management Act, 2005, Police Station Loni Border, District Ghaziabad, pending in the court of Additional Chief Judicial Magistrate, Court No.3, Ghaziabad.

3. Petitioner is a sitting Member of Legislative Assembly of Uttar Pradesh.

4. Learned counsel for the petitioner submits that in view of the bar prescribed under Section 195 Cr.P.C. the prosecution for the said offence is permissible only on a complaint in writing by the competent officer whose order could have been violated by a person. He further submits that the prosecution for offence under Section 188 IPC can not be initiated by a police report. He, therefore, submits that taking cognizance for offence under Section 188 IPC against the petitioner, is wholly illegal and without jurisdiction.

5. So far the offence under Section 171-F IPC is concerned, learned counsel for the petitioner submits that Section 171-F IPC can not be invoked against the candidate of an election. That offence is in respect of an agent or supporter, but not against the candidate. He also submits that the offences under Sections 269 and 270 IPC are also not made out in the facts and circumstances of the case. He, therefore, submits that the learned Magistrate has not applied his judicial mind while taking cognizance against the petitioner and summoning him to face the trial.

6. Considering the entirety of the facts and circumstances of the case, the impugned proceedings are nothing but an abuse of process of the Court and the petitioner, who is a responsible Member of Legislative Assembly and has been elected thrice, is unnecessarily being prosecuted and the facts of the case do not disclose any such offence for which he is being prosecuted.

7. On the other hand, learned AGA has not disputed the aforesaid legal submissions.

8. For sake of convenience, Section 195 Cr.P.C. reads as under:-

?195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.-(1) No Court shall take cognizance --

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), 1 [except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.]

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appellable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.?

9. Thus, in respect of offences punishable under Sections 172 to 188 IPC or abetment, the Court can take cognizance only on a complaint in writing of the public servant concerned or some public servant to whom he administratively subordinate. The prohibitory orders are issued by the executive Magistrates. In this case, the FIR was registered by a police report, on which the charge sheet has been filed, therefore, the charge sheet can not be treated to be a complaint.

10. In view thereof, taking cognizance for offence under Section 188 IPC by the learned Magistrate is hit by Section 195 Cr.P.C. and, therefore, the order taking cognizance for offence under Section 188 IPC against the petitioner on a police report is unsustainable and the same is liable to be set aside.

11. Section 171-F IPC would read as under:-

171-F. Punishment for undue influence or personation at an election. ?
Whoever commits the offence of undue influence or personation at an election shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both. ?

12. It would be apt to extract Sections 269 and 270 IPC, which are as under:-

"269. Negligent act likely to spread infection of disease dangerous to life.-

Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

270. Malignant act likely to spread infection of disease dangerous to life.--

Whoever maliciously does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. ?

13. Considering the aforesaid facts, this Court is of the view that the offences under Sections 171-F, 269 and 270 IPC are also not attracted against the petitioner in the facts and circumstances of the case.

14. In view thereof, the present petition is allowed and the summoning/cognizance orders dated 29.3.2022 as well as charge sheet dated 6.3.2022 and the entire proceedings of Criminal Case No.2561 of 2022 (State Vs. Madan Bhaiyya and others), arising out of Case Crime No.81 of 2022, under Sections 171-F, 188, 269 and 270 IPC, Section of Epidemic Act, 1987 and Section 51 of the Disaster Management Act, 2005, Police Station Loni Border, District Ghaziabad, pending in the court of Additional Chief Judicial Magistrate, Court No.3, Ghaziabad, so far it relates to the petitioner, are hereby quashed."

4. It is further argued by counsel for the applicant that since the

controversy involved in the present application is identical as in the case of Madan Bhaiyya @ Madan Gopal hence applicant is also entitled for the same relief.

5. This fact has not been denied by the learned AGA.

6. In view of the same, the present petition is allowed. The proceedings of charge sheet dated 19.06.2022 as well as cognizance order dated 18.04.2023 in case crime no. No. 45 of 2022, Case No. 1627 of 2023 (State vs Kuldeep @ Bittu and others) under Section 188, 269, 270, 171-H, I.P.C. and 3/4 Pandemic Act, 1887, Police Station Khekra, District Baghpat so far it relates to the petitioner are hereby quashed.

Order Date :- 1.11.2023

Pramod Tripathi