

Court No. - 88

Case :- APPLICATION U/S 482 No. - 33198 of 2023

Applicant :- Madan Mohan

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

Counsel for Applicant :- Navin Kumar Sharma, Sundeep Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh, J.

1-Heard Mr. Sandeep Shukla, learned counsel for the applicant and Mr. Rabindra Kumar Singh, learned Additional Government Advocate for the State of U.P./opposite party no. 1.

2-This application dated 29.08.2023 under Section 482 Cr.P.C. has been filed by the applicant with a prayer to quash charge-sheet No. 61 of 2018 dated 14.02.2018, cognizance and summoning order dated 23.04.2018, bailable warrant dated 21.10.2021 and proceeding of case no. 1137/12/18 (*State vs. Badelal alias Shrikant and others*) arising out of case crime No. 447 of 2017, under Section 3 of Prevention of Damage to Public Property Act, Police Station Rajapur, District Chitrakoot, pending in the court of Chief Judicial Magistrate, Chitrakoot.

3-Brief facts and relevant dates and events of the case are that on 04.11.2017 when police personnel were on patrolling duty, they received information from the informer that illegal stolen sand loaded in a tractor trolley is coming from Dubey's Purva Mahara. Believing the said information, the police personnel along with informer reached there and on pointing out by the informer, they signaled the driver to stop the tractor. The tractor driver slowed down the tractor and when police personnel reached near him, he again tried to run away. Then police personnel strictly asked him to stop the tractor. Then driver stopped the tractor, got down and started running away and other person remained sat on the tractor. The police personnel ran and caught the driver. Tractor was without number. On asking about the name and address, driver disclosed his name as

Badelal, son of Shivnaresh and other person who was sitting on the tractor disclosed his name as Kalyan, son of Shankar Yadav. When he was asked about MM11 of loaded sand in the trolley attached to tractor, he could not show any document. He further disclosed that the tractor owner has hired him and he was bringing the sand from Yamuna river ghat by stealing it. Driver Badelal and Kalyan were taken into custody in accordance with law informing that they have committed an offence under Sections 379/411 IPC, section 4/21 Mines and Minerals (Development and Regulations) 1957 and Section 3 of Prevention of Damage to Public Property Act. The tractor, trolley and illegal sand in question were also seized.

4-Thereafter two separate First Information Reports have been lodged. Both the FIRs have been lodged on the same day, same time, at the same police station and by the same complainant, i.e. on 05.11.2017 at 4.25 AM at police station Rajapur, district Chitrakoot by SHO Sunil Kumar Dubey. FIR at Case Crime No. 446 of 2017 has been lodged for the offence under Section 379\411 IPC and section 4/21 Mines and Minerals (Development and Regulations) 1957 whereas FIR at Case Crime No. 447 of 2017 has been lodged for the offence under Section 3 of Prevention of Damage to Public Property Act.

5-The instant application is related to above mentioned case crime No. 0447 of 2017 in which after culmination of investigation, charge-sheet dated 14.2.2018 was submitted under Section 3 of Prevention of Damage to Public Property Act against Badelal @ Srikant, Kalyan and Madan Mohan (present applicant), on which the Chief Judicial Magistrate, Chitrakoot took cognizance on 23.4.2018 and summoned the accused persons to face trial. On 7.7.2023, co-accused Badelal @ Srikant and Kalyan appeared before the trial court and thereafter the trial court fixed 23.9.2023 for framing charge against them. The applicant did not appear before the trial court and filed the instant application under Section 482 Cr.P.C. on 29.8.2023.

6-At the outset learned Additional Government

Advocate for the State has raised a preliminary objection that the instant application has been preferred by the applicant after inordinate delay of more than five years from the date of filing of charge sheet and summoning order as noted above, therefore same is liable to be dismissed on the ground of laches.

7-In reply to the above preliminary objection, learned counsel for the applicant submits that no process has been served upon the applicant. In the month of June 2023, applicant came to know about the present criminal case against him, thereafter he collected relevant documents and filed this application in August 2023.

8-In view of the above, first question which arises for consideration is as to whether the application under Section 482 Cr.P.C. is barred by laches and inordinate delay.

9-Section 482 Cr.PC starts with a non-obstante clause and that being unfettered by any provision of law contained in Cr.P.C., the High Court is conferred with the powers to pass orders to prevent the abuse of process of law or to secure the ends of justice. There is no dispute about the fact that no period of limitation has been prescribed by the Limitation Act within which an application under Section 482 Cr.PC ought to be filed, therefore the provisions of the Limitation Act is not applicable, but in appropriate cases laches are also treated as an important factor in justice delivery system. In this regard, it would be useful to refer the judgment of Orissa High Court in the matter of **Bata & Others vs. Anama Behera**, 1990 Cri LJ 1110 which has dealt with similar question. Wherein the learned single Judge of the Orissa High Court has observed that though for filing an application under section 482 there is no limitation, the application should be filed within a reasonable time, so that the progress of the case is not disturbed at a belated stage. A revision petition challenging an order can be filed within 90 days from the date of the order similarly a period of 90 days which is at par with a revision petition should be

treated as reasonable time for filing an application under section 482.

10-I agree with the observation made by the Orissa High Court that if a revision against an order of summoning of accused could be filed within a period of 90 days then ordinarily a period of 90 days can also be said to be reasonable in normal circumstances for preferring an application under Section 482 Cr.PC before the High Court.

11-Having heard the submissions of learned counsel for the applicant and learned A.G.A. for the state and examined the matter, I find that in paragraph no. 35 of the affidavit filed in support of the application, applicant has mentioned that in the month of June 2023, applicant came to know about the present criminal case but he has not disclosed that how he came to know about the proceedings of this case. The source of knowledge is the relevant factor for explaining the delay, which is missing in the instant case. The evasive averment about the knowledge of the proceedings of this case to the applicant prima facie creates doubt as the same does not inspire confidence. Under the facts of the case and for the reasons mentioned above, I am of the considered opinion that the present application is highly belated and there is inordinately delayed of more than five years in challenging the charge sheet, cognizance and summoning order as well as proceedings of the aforesaid case by invoking the jurisdiction under Section 482 Cr.PC of the High Court, for which no convincing explanation has been given in the application.

12-In view of the above, I do not agree with the contention of the learned counsel for the applicant and find force in the preliminary objection raised by learned Additional Government Advocate for the State as noted above. This Court is also of the view that If same is permitted to be done, then as a consequence of which no trial before the Trial Court would be either able to proceed or get concluded.

13-This application is accordingly ***dismissed*** on the

ground of laches.

14-It goes without saying that if the applicant moves a discharge application at the appropriate stage, the same shall be decided by the concerned Court below in accordance with law.

15-Copy of this order be sent to the concerned Court below for information within a week.

Order Date :- 16.11.2023

Saurabh