

Court No. - 86

Case :- APPLICATION U/S 482 No. - 33191 of 2023

Applicant :- Umesh Chandra And Another

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

Counsel for Applicant :- Dileep Kumar Shukla, Mohit Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta, J.

1. Heard learned counsel for the applicants, learned AGA for the State and perused the record.

2. The present application u/s 482 Cr.P.C. has been filed with the prayer to quash summoning order dated 14.08.2023 as well as entire proceedings of Complaint Case No. 3796 of 2022 (Kishan Lal Vs. Umesh Chandra and another), under Sections 323, 504 and 506 IPC, P.S. Chandausi, District Sambhal, pending in the court of C.J.M., Sambhal at Chandausi.

3. As per the allegations made in the complaint/application u/s 156(3) Cr.P.C. it is alleged that on 19.06.2022 at about 1.30 p.m. while the complainant was sitting inside his house, Umesh Chandra, Tarang Gupta and wife of Umesh Chandra, entered therein armed with lathi, danda and bricks and started hurling abuses and further assaulted the complainant and his son Pushpendra Sharma with an intention to kill them.

4. It is further alleged that wife of the complainant, Vilason and one Harkishan and several other persons rushed and rescued him and his son Pushpendra, however, the accused/applicants left his house extending death threats to them. Thereafter, the complainant reached the police station to lodge the FIR, however instead, the victim was medically examined at Government Hospital, Chandausi and thereafter his son was referred for further treatment to C.H.C., Sambhal. The complainant again insisted to lodge his report, however, his report was not registered despite approaching the higher authorities, as such, the instant application u/s 156(3) was instituted before the court of Chief Judicial Magistrate, Sambhal for a direction to the police of

Police Station concerned to lodge a report and investigate.

5. On the basis of the said application u/s 156(3), the learned Magistrate vide his order dated 20.07.2022 directed the said application to be registered as a complaint case and directed opposite party no.2 to get his statement recorded under Section 200 Cr.P.C. Opposite party no.2 thereafter got his statement recorded u/s 200 Cr.P.C. and that of his witnesses under Section 202 Cr.P.C. and the learned Magistrate vide his order dated 14.08.2023 summoned the applicants to face trial under Sections 323, 504 and 506 IPC.

6. Being aggrieved and dissatisfied by the said order, the present application u/s 482 Cr.P.C. has been filed.

7. Learned counsel for the applicants has submitted that in respect of the incident dated 19.06.2022, opposite party no.2 not only filed an application u/s 156(3) Cr.P.C. before the Magistrate to get his case registered but had also moved applications addressed to the Chief Minister and other higher police authorities as well as District Authorities highlighting his grievance. Pursuant to the said application, an FIR in respect of the said incident was also registered at Police Station Chandausi District Sambhal vide Case Crime No. 327 of 2022 under Sections 323 and 452 IPC. After lodging of the FIR, the police conducted the investigation and recorded the statement of various witnesses including opposite party no.2 and his witnesses and after concluding the investigation and taking into consideration the medial reports of the injured witnesses, submitted the charge-sheet against the applicants vide charge-sheet no. 1 of 2022, under Sections 323/325 IPC. On the basis of the said charge-sheet, the learned Magistrate had taken cognizance under Section 323/325 IPC and summoned the applicants to face trial vide order dated 14.10.2022.

8. Learned counsel for the applicants has submitted that since in respect of the incident dated 19.06.2022, opposite party no.2 has not only instituted the present complaint case against the applicants, in which, they have been summoned to face trial under Sections 323, 504 and 506 IPC but in respect of the same incident, an FIR was also registered and the police after concluding the investigation against the applicants has submitted the charge-sheet and they have already been summoned to face trial under Sections 323/325 IPC, therefore, the proceedings instituted on the

basis of complaint against the applicants vide Complaint Case No.3796 of 2022 (Kishan Lal Vs. Umesh Chandra and others), under Sections 323, 504 and 506 IPC is bad in law and liable to be quashed.

9. In order to buttress his arguments, learned counsel for the applicants has relied upon the decisions reported in **2021 (5) SCC Page 435 Krishna Lal Chawla Vs. State of U.P.** and **T.T. Antony Vs. State of Kerala and others** reported in **(2001) 6 SCC 181**.

10. Per contra, learned AGA has vehemently opposed the said prayer and has supported the impugned order summoning the applicants to face trial under Sections 323, 504 and 506 IPC. He has further submitted that at the most, the applicants may take recourse to the provisions of Section 210 Cr.P.C. In order to further buttress his argument, he has relied upon a decision reported in **(2010) 10 SCC 12, Pal @ Palla Vs. State of U.P.** and **R.K. Khanna Vs. State of U.P.** reported in **(2003) 11 SCC 758**. He has further submitted that in view of the law laid down by Hon'ble Apex Court in the case of **R.K. Khanna** (supra), the entire proceedings based on the complaint cannot be quashed.

11. Heard learned counsel for the parties and perused the record.

12. In order to appreciate the rival submission made by learned counsel for the parties, it would be germane to mention the provisions of Section 210 of Cr.P.C., which reads as under :-

"210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.

(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint

case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code."

13. The Hon'ble Apex Court while interpreting the provisions of Section 210 Cr.P.C., in the case of **Pal @ Palla** (supra) has held as under:-

"26. Section 210 Cr.P.C. provides the procedure to be followed when there is a complaint case and police investigation in respect of the same offence. Sub-Section (1) of Section 210 provides that when in a case instituted otherwise than on a police report, namely, a complaint case, the Magistrate is informed during the course of inquiry or trial that an investigation by the police is in progress in relation to the offence which is the subject matter of inquiry or trial held by him, the Magistrate is required to stay the proceedings of such inquiry or trial and to call for a report on the matter from the Police Officer conducting the investigation.

27. Sub-Section (2) of Section 210 provides that if a report is made by the Investigating Officer under Section 173 and on such report cognizance of any offence is taken by the Magistrate against any person, who is an accused in a complaint case, the Magistrate shall inquire into or try the two cases together, as if both the cases had been instituted on a police report. Sub-Section (3) provides that if the police report does not relate to any accused in the complaint case, or if the Magistrate does not take cognizance of any offence on a police report, he shall proceed with the inquiry or trial which was stayed by him, in accordance with the provisions of the Code."

14. It would be further germane to mention that in the case of **R.K. Khanna** (supra), the Hon'ble Apex Court in the facts of the case has observed as under:-

"3. It appears from the records of this case that a complaint had been filed under Section 200 CrPC on 24-4-1990 and at that stage an FIR had also been registered with the SHO and the police was investigating into the allegations made in the FIR. The Magistrate, however, in the complaint case took cognizance by order dated 21-3-1991 on a finding that there are sufficient reasons to proceed against the two accused persons under Section 304-A IPC and directed issuance of summons. Against the said order of issuance of summons, the accused moved the revisional court and having been unsuccessful therein, moved the High Court for quashing of the complaint proceeding. In the police case which started on the basis of the FIR given, the police ultimately filed the final form under Section 173 CrPC and the complainant appeared before the Magistrate and also protested.

4. The High Court in the impugned judgment being of the opinion that the Magistrate not having exercised his powers under sub-section (1) of Section 210 CrPC and not staying the complaint proceeding, has committed serious error and, therefore, the complaint proceeding should be quashed.

5. Having examined the provisions of Section 210 CrPC, more particularly sub-section (3) of Section 210, we have no hesitation to come to the conclusion that the High Court committed serious error in exercising its power under Section 482 CrPC in quashing the complaint case merely because the Magistrate had not exercised his powers by staying the complaint case under sub-section (1) of Section 210 CrPC and, therefore, the impugned order cannot be sustained. We accordingly set aside the impugned order of the High Court and direct that the complaint case be proceeded with. This appeal stands allowed accordingly."

15. Perusal of the record shows that in respect of the incident dated 19.06.2022, opposite party no.2, at the first instance, tried to lodge the report at the police station, however, the police did not register his FIR and sent his son for medical examination and even after being medically examined, the police did not lodge his report under Section 154 Cr.P.C. Opposite party no.2 even approached the higher police authorities to get his report registered but to no avail, as such, the application u/s 156(3) Cr.P.C. was filed before the Magistrate for directing the police to register the FIR, however, the Magistrate, on its turn, treated the said application as a complaint, under Section 156(3) Cr.P.C. and proceeded to make the enquiry under Section 200 and 202 Cr.P.C.. Thereafter, the learned Magistrate after making the requisite enquiry, summoned the applicants to face trial under Section 323, 504 and 506 IPC. In the meanwhile, other application for registration of the case, which was sent by opposite party no.2 to the higher police authorities and other higher authorities having taken note of the said incident, lodged an FIR and the Police after conducting the investigation submitted the charge-sheet against the applicants under Section 323, 325 IPC, on which, the learned Magistrate had taken cognizance and summoned the applicants to face trial.

16. In the said circumstances, it is well settled principle of law as held by the Hon'ble Apex Court in several of its decision that the applicants may take recourse to Section 210 Cr.P.C. but the proceedings of the complaint case cannot be quashed on the ground that the applicants have also been summoned to face trial under Section 323, 325

IPC in respect of the same incident.

17. The case law relied upon by learned counsel for the applicants is clearly distinguishable in the facts and circumstances of the case, wherein on the basis of the FIR registered vide Case Crime No. 283 of 2017, investigation was conducted and charge-sheet was filed against respondent no.2 and his wife under Sections 323, 504 and 506 IPC. Subsequently, the Magistrate framed charges against the husband and wife, however, not a single witness was examined despite considerable delay in the proceedings and as such, being dissatisfied with the progress on the police report case, a complaint was filed against the appellants after a delay of six years from the date of alleged incident and in the private complaint, not only new allegations were added but all allegations were wilder and different from the averments made in the NCR, on the basis of which, investigation was made and ultimately process was issued under Section 506(II) IPC also only to bring private complaint under period of limitation under Section 468 Cr.P.C.

18. In the said background, the complaint case was quashed by the Hon'ble Apex Court on the ground that filing of a complaint without any preclude after a gap of six years from the date of giving information to the police smacks of malafide on behalf of respondent no.2 and further on the ground that in the fresh complaint instituted by him, the complainant deliberately suppressed the material facts of the charge-sheet, which was also filed in respect of the same incident against the persons, however, in the present case, the proceedings of the complaint case as well as the police report case has proceeded simultaneously against the applicants and in the complaint case cognizance has been taken under Section 323, 504 and 506 IPC whereas in the police report case cognizance has been taken under Sections 323 and 325 IPC and thus, it was open to the applicants to move an application u/s 210 Cr.P.C. for appropriate orders, however, the applicants instead of approaching the court below has come up before this Court for quashing of the entire proceedings of the complaint case, which as per law laid down by the Hon'ble Apex Court in the case of **R.K. Khanna** (supra), cannot be quashed in exercise of power under Section 482 Cr.P.C.

19. In view of the aforesaid discussion and the observation

made, the instant complaint cannot be quashed and nipped in the bud at this stage in exercise of power under Section 482 Cr.P.C.

20. The present application under Section 482 CrPC is, therefore, devoid of merits and is accordingly **dismissed**.

Order Date :- 17.10.2023

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