**Court No. - 90**

**Case :-** APPLICATION U/S 482 No. - 34466 of 2023
**Applicant :-** Pankaj And 5 Others
**Opposite Party :-** State of U.P. and Another
**Counsel for Applicant :-** Ravi Sahu
**Counsel for Opposite Party :-** G.A.

**Hon'ble Dinesh Pathak,J.**

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

2. The present applicants have invoked the inherent power of this Court under Section 482 Cr.P.C. beseeching the quashing of summoning order dated 31.01.2023 as well as entire criminal proceedings of Criminal Complaint Case no.1769 of 2020, under Sections 323, 504, 506, 452 I.P.C., Police Station Shivli, District Kanpur Dehat, pending before the court of learned Additional Chief Judicial Magistrate, Court No.2, Kanpur Dehat.

3. Opposite party no.2 has moved an application under Section 156 (3) Cr.P.C. levelling allegation of intentional insult, criminal intimidation and house tress pass against the present applicants with an averment that on the date of incident dated 18.07.2022 at about 4:00 p.m. applicant no.1 along with accomplice has barged into the house of the complainant and beaten him up and his father. Learned Magistrate having considered the contents of the complaint and the statement under Sections 200 and 202 Cr.P.C., has issued process against the applicant nos.1 and 2, under Sections 323, 504, 506 and 452 I.P.C. Simultaneously, process has also been issued against the remaining accused under Sections 452, 504, 506 I.P.C.

4. It is submitted by learned counsel for the applicants that the complaint has been filed at a belated state on 01.09.2022, showing the incident dated 18.07.2022, in counter-blast to the previous F.I.R., being Case Crime No.0242 of 2022 dated 24.07.2022, filed on behalf of Smt. Ranno Devi (mother of the applicant no.1). In the F.I.R. same date of occurrence has been shown as 18.07.2022 at about 5:00 p.m. It is further submitted that the complaint has been filed just to exert pressure upon the present applicants, so that they may come to the compromise in the previous police case on the terms and conditions of the opposite party no.2, who is one of

the accused therein.

5. Having considered the submissions as raised by learned counsel for the applicants and perusal of record, it is manifested that prima-facie, occurrence of incident dated 18.07.2022 cannot be denied in the light of the police case as well as complaint case filed by the parties against each other. Having considered the contents of the complaint and the statement of complainant as well as witnesses under Sections 200 & 202 Cr.P.C., prima facie, the complicity of the present applicants in the commission of crime cannot be ruled out. The innocence of the present applicants as is being tried to put by the learned counsel for the applicants is a matter of trial which can be adjudicated upon more appropriately by learned trial court after appraising the evidence adduced by the parties.

6. At this juncture, in exercise of inherent jurisdiction under Section 482 Cr.P.C., this court is not expected to conduct a mini trial to examine the innocence of the present applicants as is being tried to put forward by counsel for the applicants. Their innocence can appropriately be adjudicated upon by the trial court after appraising the evidence on record. Prima facie, neither there is any abuse of process of court or nor any ground is made out to pass an order to secure the ends of justice. Considering the facts and circumstances of the present case, no case is made out so as to warrant any interference of this Court in exercise of inherent jurisdiction under Section 482 CrPC to quash the entire criminal proceedings.

7. Record reveals that learned counsel for the applicant has raised disputed question of fact qua involvement of present applicant in the incident in question.

8. In exercise of inherent power under Section 482 Cr.P.C., this Court is not expected to analyze the factual evidence which is to be placed before the trial court. The power conferred under Section 482 Cr.P.C. is very specific and wide to secure the ends of justice or to prevent the abuse of the process of any Court or to make such orders as may be necessary to give effect to any order under this Code. No provision of this Code is deemed to limit or effect such inherent power of the High Court.

9. It has been held by the Apex Court in the cases of ***R.P. Kapur Vs. State of Punjab : AIR 1960 SC 866; State of Haryana and Ors. Vs. Bhajan Lal and Others : 1992 Supp (1) SCC 335; Trisuns Chemical Industry Vs. Rajesh Agarwal and Ors. : (1999)***

***8 SCC 686 3; M. Krishnan Vs. Vijay Singh & Anr. : (2001) 8 SCC 645; Joseph Salvaraj A. Vs. State of Gujarat and Ors. : (2011) 7 SCC 59; Arun Bhandari Vs. State of Uttar Pradesh and Ors. : (2013) 2 SCC 801; Anand Kumar Mohatta and Anr. Vs. State (NCT of Delhi), Department of Home and Anr. : (2019) 11 SCC 706*** that exercise of inherent power of the High Court under Section 482 of the Code of Criminal Procedure is an exceptional one. Great care should be taken by the High Court before embarking to scrutinise the complaint/FIR/charge-sheet in deciding whether the rarest of the rare case is made out to scuttle the prosecution in its inception.

10. In the case of ***Gian Singh vs. State of Punjab, (2012) 10 SCC 303***, Hon'ble Supreme Court has made the following observation in Paragraph 61 which is quoted herein below :-

*"61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or an FIR or a complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plentitude with no statutory limitation but it has to be exercised in accord with the guideline en-grafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court."*

11. In Criminal Appeal No. 675 of 2019 arising out of ***SLP (Crl.) No. 1151 of 2018, Mohd. Allauddin Khan v. State of Bihar and others, 2019 (6) SCC 107***, the Apex Court has held that the High Court had no jurisdiction to appreciate the evidences of the proceedings under Section 482 Cr.P.C. because where there are contradictions or the inconsistencies in the statements of the witnesses, is essentially an issue relating to appreciation of evidences and the same can be gone into by the Judicial Magistrate during trial, when the entire evidence is adduced by the parties. The same view has also been reiterated in judgment dated 31.07.2019 passed by Apex Court in Criminal Appeal No.1082 of 2019, arising out of ***SLP (Crl.) No.10762 of 2018, Chilakamarthi Venkateswarlu and Another v. State of Andhra Pradesh and Another***.

12. In the case of ***Priti Saraf & anr. Vs. State of NCT of Delhi & anr. Criminal Appeal No(s). 296 of 2021 (Arising out of SLP(Crl.) No(s). 6364 of 2019] (judgment dated March 10, 2021) : 2021 SCC Online SC 206*** the Apex Court while considering the powers under Section 482 Cr.P.C. has held as follows:

*"23. It being a settled principle of law that to exercise powers under Section*

*482 CrPC, the complaint in its entirely shall have to be examined on the basis of the allegation made in the complaint/ FIR/charge-sheet and the High Court at that stage was not under an obligation to go into the matter or examine its correctness. Whatever appears on the face of the complaint/FIR/charge-sheet shall be taken into consideration without any critical examination of the same. The offence ought to appear ex facie on the complaint/FIR/charge-sheet and other documentary evidence, if any, on record.*

13. The scope and ambit of the inherent jurisdiction of the High Court under Section 482 CrPC has been examined in detail by Hon'ble Apex Court in ***State of Haryana and Others Vs. Bhajan Lal and Others, (1992 Suppl (1) SCC 335)***. The relevant para is mentioned hereunder:-

*"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

*(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

*(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

*(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

*(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

*(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

*(6) Where there is an express legal bur engrafted in any of the provisions of*

*the Code on the concerned Act (under which a criminal proceeding is instituted to the institution and continuance of the proceedings and or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

*(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due 10 private and personal grudge."*

14. It has been further elucidated recently by Hon'ble Apex Court in ***Arnab Manoranjan Goswami Vs. State of Maharashtra and Others, 2020 SCC Online SC 964*** where jurisdiction of the High Court under Article 226 of the Constitution of India and Section 482 CrPC has been analysed at great length.

15. Further, in the case of ***M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others reported in AIR 2021 SC 1918***, Full Bench of the Apex Court while considering the powers of quashing under Section 482 of the Criminal Procedure Code and/or Article 226 of the Constitution of India has illustrated the circumstances under which quashing of a criminal case can be done and/or interim order can be granted.

16. Therefore, the disputed defence of the accused cannot be considered at this stage. In absence of any of the Antil grounds recognized by the Supreme Court which might justify the quashing of complaint or the impugned proceedings, the prayer for quashing the same is not sustainable in the eyes of law. I do not see any abuse of the court's process either. The summoning court has been vested with sufficient powers to discharge the accused even before the stage to frame the charges comes, if for reasons to be recorded it considers the charge to be groundless. Moreover, the applicants have got a right of discharge under Section 239 or 227/228 Cr.P.C., as the case may be, through a proper application for the said purpose and he is free to take all the submissions in the said discharge application before the Trial Court.

17. Having considered the rival submissions advance by learned counsel for the applicant and learned AGA and the material available on record, in the light of dictum of Hon'ble Apex Court as discussed above, no ground is made out to consider the merits of the instant case. As such, prayer of quashing as made in instant application is hereby refused.

18. Accordingly, the present application under Section 482 Cr.P.C. is hereby **dismissed**.

19. Before parting, learned counsel for the applicants submits that the bail application if filed by the present applicants may be considered in the light of the dictum of Hon'ble Supreme Court in the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation and another reported in (2021) 10 Supreme Court Cases 773***. In the cited case, Hon'ble Supreme Court has given certain guidelines for deciding the bail applications by categorising the offences.

20. Considering the entire facts and circumstances of the case and the dictum of Hon'ble Supreme Court, I think it appropriate that in case, the present applicants appear/surrender before the concerned court below and move bail application within three weeks, the same shall be considered and decided in accordance with law, considering the judgment of Hon'ble Supreme Court, expeditiously as early as possible.

**Order Date :-** 12.10.2023
Jitendra

Digitally signed by :-
JITENDRA KUMAR PATEL
High Court of Judicature at Allahabad