Court No. - 90

Case :- APPLICATION U/S 482 No. - 39037 of 2023

Applicant :- Fahim Raza
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Mandvi Tripathi,Rahul Kumar
Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Pathak,J.

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

2. The present applicant has invoked the inherent power of this Court under Section 482 CrPC beseeching the quashing of cognizance/summoning order dated 27.5.2022, charge sheet dated 9.7.2021 as well as entire criminal proceeding of Case No. 17724 of 2022 arising out of Case Crime No. 47 of 2021 (State of U.P. vs. Sharik Aman & others), under Sections 406, 420, 411 & 120B I.P.C., Police Station Gorakhnath, District Gorakhpur pending in the court of learned Additional Judicial Magistrate-1st, Gorakhpur.

3. As per FIR version, the main accused namely Aman has placed an order for supply of some hard boards/ply and chunks of Makrana marble stones, however, he has not paid money in lieu of said supply of goods and fled away from the Godown in question where the material was supplied.

4. It has been submitted by the learned counsel for the applicant that the present applicant was not name in the FIR, however, at later stage, his name surfaced at the time of recovery of the material i.e. case property which is subject matter of the FIR. As per recovery memo/case diary (paper No. 33 of the instant paper book), on the information received from the informer, the DCM Truck was intercepted by the police wherein all the goods were recovered along with three persons including the present applicant, who was arrested on spot. It is further submitted that the applicant was on his way to Sant Kabir Nagar and has taken the help from the driver of the truck in question to facilitate his travel on the charge of Rs. 100/-. It has been submitted that the present applicant has no concern with the recovery of goods

which is a case property in the instant matter.

5. The learned AGA has vehemently opposed the submissions as raised by the learned counsel for the applicant and supported the charge sheet as well as cognizance/summoning order.

6. Having considered the rival submission advanced by the learned counsel for the applicant, learned AGA and perusal of record, it is manifested that in the recovery memo unequivocal averment has been made with respect to the recovery of goods from the truck, which is case property, from where the present applicant along with two other persons were arrested as well on the spot namely Ankur, Faheem Raza (applicant herein) and driver namely Mohammed Sharif. In this eventuality, prima facie, the complicity of the present applicant in the commission of alleged crime cannot be ruled out. The applicant has to explain his conduct as to how he was part of the truck in question which has been intercepted along with the material for which FIR has been lodged. The case of the present applicant that he was simply a passenger travelling from Gorakhpur to Sant Kabir Nagar is a question to be decided by the trial court concerned after appraisal of evidence adduced. From perusal of record, prima facie, the complicity of the present applicant in the commission of crime cannot be ruled out. Innocence of the present applicant, as is being tried to be put by the learned counsel for the applicant, is a matter of scrutiny which can more appropriately be adjudicated upon by the trial court after appraisal of evidence available on record. At this juncture, in exercise of inherent jurisdiction under Section 482 CrPC, this Court is not expected to conduct a mini trial to examine the innocence of the present applicants in the occurrence of offence.

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. 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.

8. 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.

9. 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."

10. 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.**

11. 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.*

12. 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."

13. 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.

14. 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.

15. Therefore, the disputed defence of the accused cannot be considered at this stage. In absence of any of the 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.

16. 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 made out to consider the merits of the instant case. As such, prayer of quashing as made in instant application is hereby refused.

17. Accordingly, the present application under Section 482 CrPC is hereby **dismissed.**

18. Before parting with the case, learned counsel counsel for the applicant has prayed for a direction for expeditious disposal of the trial pending before the trial court concerned.

19. Considering the facts and circumstances of the case, the court concerned, before whom the aforementioned matter is pending disposal, is hereby directed to decide the aforementioned case expeditiously.

Order Date :- 28.11.2023
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Digitally signed by :-
VINAY KUMAR
High Court of Judicature at Allahabad