

Court No. - 90

Case :- APPLICATION U/S 482 No. - 40678 of 2023

Applicant :- Rajesh Kumar And 2 Others

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

Counsel for Applicant :- Ajay Kumar Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Pathak,J.

1. Supplementary affidavit filed today is taken on record.
2. Heard learned counsel for the applicants, learned AGA and perused the record.
3. The present applicants have invoked the inherent power of this Court under Section 482 CrPC beseeching the quashing of charge sheet dated 11.07.2021, cognizance order dated 25.07.2022 as well as entire proceedings of Case No.9339 of 2022 (State Vs. Shailendra and others), arising out of Case Crime No.647 of 2020, under Sections 419, 420, 406, 504 IPC, Police Station Kotwali Nagar, District Etah, pending before the A.C.J.M., Etah.
4. Opposite party no.2 has lodged an FIR, being Case Crime No.0647 of 2020 dated 24.09.2020, against the present applicants levelling allegation of cheating and criminal breach of trust with an averments that the first informant is an employee of Ganga Vidhya Finance, which is doing business of disbursing loan for which it already possess license. Shailendra Kumar (applicant no.3) came with two guarantors (applicant nos.1 and 2) and borrowed loan amounting Rs. 2,00,000/-. However, after expiry of the period, for which loan was taken, they have not reimbursed the loan amount. On the repeated request, applicant nos.1 and 2(guarantors) have furnished a cheque amounting Rs. 2,47,000/-, however, same was bounced for want of sufficient funds.
5. It is submitted that the opposite party no.2 has reimbursed the entire loan amount on different dates for which company has furnished receipts. Cheque, which was given as a surety has illegally been used by the first informant and got it dishonored for want of sufficient funds. It is further submitted that at present applicant no.3 is not liable to pay any penny to the first informant in lieu of the loan, which was taken earlier. It is further submitted

that the applicant nos.1 and 2, who are the guarantors, have illegally been inculpated in the FIR on the pretext that cheque bearing No.940643 dated 17.08.2020, amounting Rs. 2,40,000/- was bounced for want of sufficient funds whereas said cheque was given at the time of loan for the purpose of surety and sum represented on the cheque was not illegally enforceable debt against the present applicant nos.1 and 2.

6. Having considered the entire case as mentioned in the FIR and the submissions as raised by learned counsel for the applicant, I am of the considered view that this Court in exercise of inherent jurisdiction under Section 482 Cr.P.C. is not expected to conduct a mini trial to examine as to whether entire loan amount has been reimbursed by the applicant no.3 or not and as to whether receipt of reimbursement furnished by complainant on different dates, as annexed in the said application, is a genuine documents or not. Considering the case of the FIR in totality coupled with the charge sheet and the material filed along with it, prima facie, neither the commission of crime can be denied nor the complicity of the present applicants in the aforesaid crime can be ruled out. The innocence of the present applicants, as is being put forward by the learned counsel for the applicant, is a matter of scrutiny which can be adjudicated upon more appropriately by the court concerned after appreciating the evidence on record. The correctness of the documents as relied by the applicants, filed along with this application, is subject to proof which can be scrutinized by the trial court.

7. Record reveals that learned counsel for the applicants 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 entirety 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 bar 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 to 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. However, it is provided that in case applicants move an appropriate application for discharge along with a certified copy of this order before the concerned Court below, the same shall be considered and decided by the Court below as expeditiously as possible in accordance with law, without being prejudiced by the order passed by this Court.

19. If the concerned Court feels persuaded to have the view that accused ought not to have been summoned and charge is groundless it shall not abstain from discharging the accused only on the ground that the material available at the time of summoning was the same which is available on record at the time of hearing the discharge application. On the other hand, if the Court below holds the view that the accused has been rightly summoned and the material brought on record does not indicate the charges to be groundless it shall make an order to that effect and proceed further in the matter, in accordance with law and shall also be free to adopt such measures to procure the attendance of the accused as the law permits.

Order Date :- 7.12.2023

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