

Court No. - 90

Case :- APPLICATION U/S 482 No. - 40196 of 2023

Applicant :- Rahul Alias Badelala

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Ram Surat Patel

Counsel for Opposite Party :- G.A.,Vikas Singh

Hon'ble Dinesh Pathak,J.

1. Heard learned counsel for the applicant, learned counsel for the respondent nos. 2 and 3 as well as learned A.G.A. for the State respondent.
2. The applicant has invoked the inherent jurisdiction of this Court assailing the summoning order dated 08.09.2023, passed by Additional District and Sessions Judge/Special Judge (POCSO Act), Jalaun at Orai, in Complaint Case No.10 of 2022 and also sought to quash the entire criminal proceedings.
3. Respondent no.2 has moved an application dated 23.11.2022 under Section 156(3) Cr.P.C. against the present applicant alongwith one co-accused, namely, Smt. Mangala levelling allegation of assault to her minor daughter intending to outrage her modesty and criminal intimidation with an averment that the present applicant was stalking and molesting her daughter. One Smt. Mangla, wife of Raj Kumar, is also involved in this act and has given a mobile to the applicant's daughter and forced her to talk with Rahul under the garb of threatening of her brother's life and ruining her educational career. On 07.11.2022, when the complainant and her husband went for the labourer work and their daughter was alone in the house, present applicant and Smt. Mangala barged into the house. Present applicant has inappropriately touched the sensitive part of the body of the daughter of the first applicant. While she resisted, Smt. Mangala threatened of her life and asked her to follow Rahul. After considering the contents of the application under Section 156 Cr.P.C. and the statements under Sections 200 and 202 Cr.P.C., the learned Magistrate has issued process against the present applicant under Sections 354, 356 I.P.C. and 7/8 POCSO Act and against Smt. Mangala under Sections 506 I.P.C. and 17/18 POCSO Act, vide order impugned dated 08.09.2023, which is under challenge before this Court. Instant application has been filed only on behalf of Rahul @ Badelala.
4. Learned counsel for the applicant submits that false and

malicious prosecution has been instituted against the present applicant for wreak vengeance. In the light of the averment as made in the complaint no case is made out under Section 7/8 POCSO Act inasmuch as there is no sign of sexual assault as required under the law. It is further submitted that false story has been portrayed in the complaint just to harass the present applicant. Learned counsel for the applicant has also emphasised the police report (Annexure No.2) to demonstrate the faulty complaint at the behest of the complainant.

5. Per contra, learned counsel for the respondent no.2 has vehemently opposed submissions as advanced by learned counsel for the applicant and contended that in the light of the averment as made in the complaint and the statement made by victim under Section 202 Cr.P.C., the occurrence of a crime under Section 7/8 of the POCSO Act is fully established. Police report as pressed by learned counsel for the applicant is not much relevant while considering the prima facie case in the light of the averment made in the complaint. It is next submitted that the present application moved on behalf of the applicant is misleading and misconceived, therefore, liable to be rejected.

6. Having considered the rival submissions advanced by learned counsel for the parties and perusal of the record, it is manifested that the complainant (respondent no.2) has unequivocally narrated the conduct of the present applicant and the incident dated 07.11.2022 wherein daughter of the complainant (respondent no.3) has been molested by the present applicant in collusion with the other co-accused. In paragraph no.6 of the complaint, specific allegations has been made against the present applicant that he has grabbed the daughter of the complainant with bad intention and started pressing the sensitive part of her breast. In her statement under Section 202 Cr.P.C., being PW 3, victim (respondent No.3) has unequivocally narrated her ordeals which she suffered owing to overt act committed by the present applicant. She has narrated as well qua the incident dated 07.11.2022 at about 9 A.M. wherein present applicant has pressed her breast with bad intention. On the aforesaid premise, prima facie, it can not be said that no case of sexual assault is made out as enunciated under Section 7 of the POCSO Act. As per case of the complaint as well as the statement of the victim, she has been threatened of her brother's life by the accused if she refused to toe the line as asked by them. In the given circumstances of the present case, prima facie, the complicity of the present applicant in the commission of crime can not be ruled out. While issuing the process against the accused, learned Magistrate has sparingly considered the statement of PW 3

(victim) and other witnesses in the light of the averment as made in the complaint and came to prima facie conclusion qua occurrence of offence to be tried, commissioned by the present applicant.

7. Learned Magistrate, while issuing the process, is not expected to go into the deep scrutiny to examine the occurrence of crime. Prima facie satisfaction of the learned Magistrate is sufficient to issue process against the accused. In the facts and circumstances of the present case, prima facie, the complicity of the present applicant in the commission of the crime can not be ruled out. Therefore, in my considered opinion, learned Magistrate has rightly issued the process against the present applicant, who has molested the victim and threatened her. The innocence of the present applicant, as is being put forward by learned counsel for the applicant, is a matter of scrutiny which can be adjudicated upon more appropriately by learned trial court after appraising the evidence available on record. At this juncture, this Court cannot conduct a mini trial to examine the innocence of the present applicant. I neither found any abuse of the process of law to the proceeding which has been challenged before this Court nor any justifiable ground to pass any order for the purposes of securing the ends of justice, therefore, there is no justification to exercise inherent power of this Court under Section 482 Cr.P.C.

8. 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.

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 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."

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 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 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 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 applicant has 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 A.G.A. 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 applicant submits that in all sections, as mentioned in the FIR, maximum punishment is seven years or less than 7 years, therefore, the bail application if filed by the present applicant 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 categorizing 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 applicant appears/surrenders before the concerned court below and move bail application within two 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 :- 8.11.2023/vkg