

Court No. - 78

Case :- APPLICATION U/S 482 No. - 41646 of 2023

Applicant :- Amarnath Sharma And 6 Others

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

Counsel for Applicant :- Raj Kumar Singh, Sunil Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh, J.

1. Heard learned counsel for the applicants and learned A.G.A. for the State.
2. The present application under Section 482 Cr.P.C. has been filed by the applicants for quashing of entire proceedings, including cognizance order dated 05.10.2023, of special S.T. No. 10 of 2019, (State v. Ramji Mishra & Others), Case Crime No. 66-B of 2006, under Sections 409, 420, 467, 468, 471, 477-A, 120-B I.P.C. read with Section 34 I.P.C. and Section 13(2) of Prevention of Anti Corruption Act, Police Station-Bairia, District-Ballia, pending in the court of Special Judge (Prevention of Corruption Act), Court No. 1, Varanasi.
3. It has been submitted by learned counsel for the applicants that in the matter of similarly placed co-accused persons, namely, Arjun Ram, Ram Murti Ram @ Ram Murti, Lakshmi Narayan Chaudhary @ Lakshmi Nath Chaudhary, co-ordinate Bench of this Court has refused to quash the proceedings but the said co-accused persons were permitted to furnish their bail bonds and two sureties to the satisfaction of the trial court, on which they have to be released on bail.
4. It was further submitted that following the same order, in case of co-accused **Bajinath Prasad**, similar relief has been granted to

him by this Court vide order dated 20.04.2023 passed in Application U/S 482 Cr.P.C. No. 14545 of 2023.

5. Learned counsel for the applicants submitted that the case of applicants is also similar to that of co-accused persons, namely, Arjun Ram, Ram Murti Ram @ Ram Murti, Lakshmi Narayan Chaudhary @ Lakshmi Nath Chaudhary and Baijnath Prasad and thus, the instant application may be disposed of granting similar relief to the applicants.

6. Learned A.G.A. has opposed the application but it could not be disputed that above stated co-accused persons have been granted above referred reliefs.

7. I have considered the rival submissions and perused the record.

8. In the instant matter, it has been shown that in application of co-accused persons, namely, Arjun Ram, Ram Murti Ram @ Ram Murti, Lakshmi Narayan Chaudhary @ Lakshmi Nath Chaudhary (Application u/s 482 Cr.P.C. No. 19369 of 2020), following order was passed by co-ordinate Bench of this Court:

"1. Heard learned Counsel for applicants and learned A.G.A. for the State and perused the record.

2. The present application (Application u/s 482 No.19369 of 2020) under Section 482 Cr.P.C. has been filed seeking following reliefs:

"(a.) To allow this application and quash the Chargesheet (No.1-D/2018) dated 14.11.2019 (Annexure-12) as well as Cognizance Order dated 07.10.2020 (Annexure-12) passed by Ld. Special Judge (Prevention of Corruption Act)/ Court No.1, Varanasi in Special Trial No.02/2018 (arising out of Case Crime No.34A/2006, U/S 409, 420, 467, 468, 471, 477A, 201, 120B/34 I.P.C. and 13(2) Prevention of Corruption Act; (State of U.P. Vs. Ram Murti Ram & Others) P.S. Narhik, District-Ballia pending in the Court of Special Judge (Prevention of Corruption Act)/ Court No.1, Varanasi.)

(b.) To stay the further proceeding of Special Trial No.02/2018 (arising out of Case Crime

No.34A/2006, U/S 409, 420, 467, 468, 471, 477A, 201, 120B/34 I.P.C. and 13(2) Prevention of Corruption Act; (State of U.P. Vs. Ram Murti Ram & Others) pending in the court of Special Judge (Prevention of Corruption Act/ Court No.1), Varanasi till the pendency of this application.)"

3. There is a common question involved in all these applications except for minor differences in some facts. Therefore, all the applications were heard together and are being decided by one common judgment by this Court. The facts of Application U/S 482 No.19369 of 2020 (Arjun Ram vs. State of U.P. and Another) are taken note of.

4. The Central Government launched a scheme to remove unemployment in rural sector of the country. The said scheme was called Sampurn Gramin Rozgar Yojana (hereinafter referred to as "S.G.R. Yojana"), and it was launched in April, 2002. Food for work program was also part of the said Yojana.

5. The applicant, namely-Arjun Ram was the Project Director of District Rural Development Agency (hereinafter referred to as "D.R.D.A.") in District-Ballia from 01.03.2003 to 10.08.2004.

6. Under food for work program, food grains allotted for the said S.G.R. Yojana was distributed amongst three agencies; 50% to Gram Panchayat, 30% to Kshetra Panchayat and 20% to Zila Panchayat. It is also stated in the petition that allocation of the cash component and food grains was done by the Chief Development Officer/C.E.O of D.R.D.A. The work under the S.G.R.Yojana was to be executed by abovementioned three agencies i.e. Gram Panchayat, Kshetra Panchayat and Zila Panchayat.

7. In August, 2004, some complaints were received at the Government level regarding malpractices, misappropriation and embezzlement of food grains and cash component by the officials of abovementioned three agencies in several districts including District-Ballia.

8. The Government constituted a High Level Committee comprising Commissioner of Rural Development, Government of Uttar Pradesh. The said Committee gave its report dated 11.10.2004. The Commissioner, Rural Development, Government of Uttar Pradesh opined that huge irregularities were committed in implementation of food for work program under the S.G.R. Yojana. He found Satyendra Singh Gangwar, Ashwani Kumar Srivastava, jointly responsible for irregularities in lifting and distribution of the food grains besides Ashok Upadhaya, Food Clerk and Sita Ram Singh, Junior Clerk.

9. Thereafter, the matter was referred to the C.B.C.I.D and on the basis of investigation, 51 F.I.Rs. were lodged in the entire State against several officials for misappropriation, malpractices and embezzlement of public money and food grains. The F.I.R. against the applicant was registered as Case Crime No.34 A of 2006 under Sections 409, 419, 420, 467, 468, 471, 201, 218, 120B/34 of the Indian Penal Code.

10. The Investigating Officer after conclusion of the investigation, submitted the charge-sheet No.1 of 2018 against co-accused, namely-Ram Murti Ram on 15.03.2018, supplementary charge-sheet No.1B of 2019 against co-accused, namely-Bharti Singh on 04.11.2018 supplementary charge-sheet No.1C of 2019 against two other co-accused persons on 08.10.2018. The supplementary charge-sheet No.1D of 2018 was submitted against the applicant-Arjun Ram and Another on 14.11.2019 and another supplementary charge-sheet No.1E of 2019 against three co-accused persons was submitted on 07.03.2010. Thereafter, learned Magistrate, Ballia, took cognizance of the matter on 07.10.2020.

11. Shri Santosh Kumar Shukla, learned Counsel for the applicant has submitted that the applicant was not involved at all in the commission of offences. The Commissioner, Rural Development, Government of Uttar Pradesh did not find any involvement of the applicant in the commission of the offences and he specifically named four employees who were responsible for committing the irregularities and illegalities in his report. He has further submitted that C.B.I. also enquired about fraudulent payments in S.G.R.Yojana, District-Ballia but did not find involvement of the applicant in commission of said offences. The C.B.I. on the basis of investigation registered a F.I.R. being Case Crime No.49B of 2006 on 30.03.2010.

12. Learned Counsel for the applicant, therefore, has submitted that when the Commissioner, Rural Development, Government of Uttar Pradesh and C.B.I. did not find involvement of the applicant in commission of the offences, the prosecution of applicant is nothing but misuse of the process of court, hence, in exercise of its power, under Section 482 Cr.P.C., the Court should quash the prosecution against the applicant. It has been further submitted that the order sanctioning prosecution of the applicant has been issued without application of mind inasmuch as in the impugned sanctioning order dated 21.01.2019 granted for prosecution of the applicant under Section 197 Cr.P.C. and Section 19 of Prevention of Corruption Act, 1988, it is mentioned that the applicant did not supervise the execution of the S.G.R.Yojana by not constituting a task force and this had occasioned the failure of non distribution of wages and food grains to deserving laborers. It was further observed that because of this, the poor schedule caste and schedule tribes and child labour's parents have suffered serious harm. The records were forged in order to misappropriate and embezzle the food grains and public money.

13. It is further submitted that no child labour was employed, therefore, there was no question of their parents having been suffered while carrying out the execution of work under the S.G.R.Yojana. It is further submitted that on the one hand, C.B.I. did not find the involvement of the applicant in the criminal offences while on the other hand; Investigating Officer of Economic Wing has filed the charge-sheet against the applicant.

14. The applicant did not cheat anyone nor had he obtained any wrongful gain to himself or undue benefits to anyone in the present case. The applicant had done nothing wrong which attracts the ingredients envisaged under Sections 13(2) of the Prevention of Corruption Act,

1988 for simple reason that there was no evidence whatsoever that he by any illegal means obtained for himself or any other person any valuable thing or pecuniary advantage and as such, he had committed no offence of criminal misconduct which is punishable under Section 13(2) of the Prevention of Corruption Act, 1988.

15. The evidence collected in the present case does not disclose ingredients of Section 120B I.P.C., therefore, it cannot be said that an offence under Section 420 read with Section 120B is made out against the applicant.

16. In the present case, the allegation is for misappropriation of Rs.16.45 lakhs under the development work and Rs. 9.40 lakhs under distribution of food grains. The allegation is leveled against 76 persons including the applicant. However, during the course of investigation, it was found that Shri Satyendra Singh Gangwar, Chief Finance and Accounts Officer was mainly responsible who had lifted the food grains and supervised the work of distribution in absence of the applicant.

17. It has been, therefore, submitted that present application be allowed and the impugned proceedings including the charge-sheet be quashed.

18. On the other hand, learned A.G.A. appearing on behalf of the State-respondents has submitted that Project Director, D.R.D.A. District-Ballia and Chief Development Officer, District-Ballia were responsible for entire distribution and supply of food grains and cash component for the work done under the S.G.R.Yojana. The Project Director, D.R.D.A. District-Ballia, and Chief Development Officer, District-Ballia had jointly signed the cheques which were issued and the money got misappropriated. Both Project Director, D.R.D.A. District-Ballia and Chief Development Officer, District-Ballia were responsible for supervision of the work by Gram Panchayat, Chhetra Panchayat and Zila Panchayat. The cash component and food grains were issued by the Project Director and Chief Development Officer concerned.

19. It has also been submitted that the Investigating Officer had collected enough evidence against the applicant and filed the charge-sheet. Learned Magistrate, District-Ballia having found prima facie, material evidence available on record for commission of the offences by the applicant and other co-accused persons and took cognizance on 07.10.2020.

20. Learned A.G.A. has further submitted that the power under Section 482 Cr.P.C. is to be exercised to secure the ends of justice and prevent the misuse of process of the Court. This is not a case of no evidence. The cheques and food grains were issued and distributed by joint signatures of the Project Director and Chief Development Officer, District-Ballia. It has been further submitted that involvement of the applicant in commission of offences prima facie established. This Court would not appreciate the evidence while deciding the petition under Section 482 Cr.P.C.

21. So far as the question of sanction of prosecution under Section 197 Cr.P.C. is concerned,

it has been submitted that merely on the ground of one sentence that child labour's parents had suffered would not be enough to say that authority did not apply its mind while granting sanction. There is enough evidence available against the applicant regarding his involvement in commission of the offences. It is further submitted that validity of the sanction order is a mixed question of fact and law which can be decided during trial. At this stage, there is no ground to interfere with impugned proceedings; the petitions being devoid of substance are liable to be dismissed.

22. I have considered the submissions made by learned Counsel for the applicant and learned A.G.A. for the State-respondents.

23. The facts in some details have been mentioned above. There is no denial that the Project Director, D.R.D.A. and Chief Development Officer, District-Ballia were responsible for issuing food grains and cash component as they were required to sign cheques jointly. During investigation after lodging of the F.I.R., involvement of the applicants has come to light. The Investigating Officer had collected the evidence and has filed the charge-sheet against the applicants.

24. Applying the parameters for exercising the power under Section 482 Cr.P.C., in a petition under Section 482 Cr.P.C. and/ or Article 226 of the Constitution of India, the Court has to examine that whether there is some evidence to disclose prima facie commission of offence by the applicants or not. It is not a case where there is no evidence available against the applicants. Therefore, I do not find much substance in the submissions of learned Counsel for the applicants that there is no evidence regarding involvement of the applicants in commission of the offence. The impugned proceedings cannot be said to be in misuse of the process of Court.

25. The question of sanction of prosecution against the applicants is a mixed question of fact and law, which can be decided during trial. It is not the case of the applicants that the sanction order has been passed by an incompetent authority. The only ground is that sanctioning authority did not apply its mind to the material placed before the authority for granting sanction for prosecution of the applicants. This question does not go to the root of the validity of the sanction. When the authority which has issued the sanction order was a competent authority, the question whether the said authority had applied its mind to the facts, material and circumstances of the case would be decided during the trial.

26. In view thereof, I do not find that these petitions have merit and substance which are hereby dismissed, however, applicants are permitted to furnish their bail bonds and two sureties to the satisfaction of the trial court concerned by 24.04.2023, on which they shall be enlarge/released on bail.

27. The trial court should proceed with the trial proceedings and conclude it expeditiously."

9. Following the above stated order, in Application u/s 482 Cr.P.C. No. 14545 of 2023, filed by co-accused Baijnath Prasad, the co-ordinate Bench of this Court passed the following order:

"1. Heard Mr. Sunil Kumar Singh, the learned counsel for applicant and the learned A.G.A. for State.

2. Perused the record.

3. This application under section 482 Cr.PC has been filed challenging the Charge Sheet No. 9B of 2019 dated 14.05.2022 submitted in Case Crime No.45A of 2006 under Sections 419, 420, 467, 468, 471, 477a, 120B/34 I.P.C. and Section 13 (2) Prevention of Corruption Act, Police Station-Sukhpura, District-Ballia as well as the Cognizance Taking Order dated 18.05.2022 passed by Special Judge (Prevention of Corruption Act) Ist Varanasi in Special Trial No. 632 of 2022 (State of U.P. Vs. Satyendra Singh Gangwar and others) on the aforementioned charge-sheet.

4. At the very out set, the learned counsel for applicant has placed before the Court the order dated 24.02.2023 passed by His Lordship, Hon'ble Mr. Justice Dinesh Kumar Singh in Application U/S 482 Cr.P.C. No. 19369 of 2020 (Arjun Ram Vs. State of U.P. and another) alongwith connected matters.

5. Learned counsel for applicant submits that the issue involved in present application is similar and identical to the issue involved in aforementioned criminal misc. application alongwith connected applications. He has then invited the attention of Court to the recital contained in paragraph 23 of the judgement placed before this Court and on basis thereof, he pleads innocence of applicant. On the above premise, he submits that similar order be passed in the case of present applicant also.

6. Per contra, the learned A.G.A. has opposed this application. However, he could not dislodge the factual and legal submissions urged by the learned counsel for applicant that case of present applicant is also covered by the judgement and order dated 24.02.2023 as noted above.

7. In view of above, prayer prayed for by means of present application is refused.

8. However, applicant is permitted to furnish his bail bond and two sureties each in the like amount to the satisfaction of the trial Court concerned by 04.05.2023, on which he shall be enlarged on bail.

9. With the aforesaid observation, this application is finally disposed of."

10. The case of applicants has also been shown similar to that of

above stated co-accused persons. In view of aforesaid, the prayer for quashing of proceedings and impugned order, is refused. However, applicants are permitted to furnish their bail bonds and two sureties each in the like amount to the satisfaction of the trial Court concerned by 08.12.2023, on which they shall be enlarged on bail.

11. With aforesaid observations, the application is **disposed of**.

Order Date :- 21.11.2023

Anand