

Neutral Citation No. - 2023:AHC:225660

A.F.R.

Court No. - 93

Case :- APPLICATION U/S 482 No. - 42306 of 2023

Applicant :- Chandrabhan Singh

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

Counsel for Applicant :- Kaushlendra Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Manoj Bajaj,J.

Applicant being accused has approached this Court through this application under Section 482 Code of Criminal Procedure seeking quashing of the charge sheet dated 13.01.2022, filed under Section 173(2) Cr.P.C. as well as the cognizance/ summoning order dated 20.4.2023 (both Annexure No.6) passed by Chief Judicial Magistrate, Sant Kabir Nagar and the proceedings arising in Case Crime No.0718 of 2021, under Sections 419, 420 I.P.C., Police Station Khalilabad, District Sant Kabir Nagar.

The above F.I.R. (Annexre No.1) was registered on the basis of complaint given by Smt. Rekha Sharma, wherein it is alleged that she is the resident of Khalilabad, District Sant Kabir Nagar and accused persons, namely, Ramnarain @ Ramnarainpur son of Indal, Chandrabhan Singh, son of Gopal Singh, who are engaged in the business of property dealing, in connivance with each other had sold 0.134 hect. land comprised in gata nos.701, 702, 723, 736 through sale

deed dated 03.06.2017 executed in favour of Jaiprakash Mishra, wherein accused Chandrabhan Singh is the witness to the sale deed. As per allegations, Chandrabhan Singh in a fictitious way got the sale deed of the land executed in favour of the complainant. On these broad allegations, the F.I.R. was registered for alleged commission of offence of cheating punishable under Section 420 I.P.C.

After registration of the case, the investigation in subject F.I.R. was carried out and upon completion of the same the impugned charge sheet dated 13.01.2022 was submitted before the court of competent jurisdiction under Section 173(2) Cr.P.C., whereupon vide order dated 20.04.2023 cognizance order was passed. Hence this petition.

Learned counsel appearing on behalf of the applicant has argued that the case of the prosecution is not maintainable against Chandrabhan Singh, the applicant, who is not involved in execution of the sale deed dated 22.11.2018, which was executed by accused Ramnarain in favour of complainant-Reeta Sharma. He submits that neither the applicant is the beneficiary of this transaction in any manner nor he signed the instrument as witness. He submits that the land, if any, which is subject matter of the case was owned by Ramnarain and both the sale deeds were executed by him, whereas the applicant was only a witness to the first sale deed executed on 03.06.2017, which has never

been questioned in any manner, much less by the complainant or the vendee-Jai Prakash.

Learned counsel has further argued that prior to the execution of the sale deed dated 22.11.2018, the vendor had executed an agreement to sell dated 13.11.2018, wherein the agreed sale consideration was fixed as Rs.3.75 lacs, and that too with Santosh Kumar Sharma, husband of the complainant, so, learned counsel while drawing attention of the Court to the agreement to sell dated 13.11.2018 has argued that the contents of this document are not part of the F.I.R., therefore, case of the applicant is distinguishable from the other co-accused. He submits that on these grounds, the interference of this Court is warranted by exercise of inherent powers under Section 482 Cr.P.C., as his prosecution is nothing, but an abuse of process of law.

Upon hearing the learned counsel for the applicant and considering his submission this Court finds that the entire case of the prosecution is based upon the documentary evidence and though the charge sheet under Section 173 (2) Cr.P.C. has been filed, but the same is yet to be considered by the trial court, as concededly, the charges have not been framed against the accused persons.

In **Dharmatma Singh vs. Harminder Singh & Ors. reported as 2011 (3) RCR Criminal 38**, the Hon'ble Supreme Court has observed that if a party can avail alternative remedy according to the provisions of Code of Criminal Procedure, in that eventuality the

inherent powers under Section 482 CrPC cannot be exercised. The relevant observations read as under :

"13. Section 482 of the Cr.P.C. saves the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. It has been held by this Court in R. P. Kapur v. State of Punjab [AIR 1960 SC 866] that Section 561-A of the Criminal Procedure Code, 1898 (which corresponds to Section 482 of the Criminal Procedure Code, 1973) saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice and such inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code and therefore where the Magistrate has not applied his mind under Section 190 of the Cr.P.C. to the merits of the reports and passed order, the High Court ought not to consider a request for quashing the proceedings. In the case of R. P. Kapur (supra) on 10.12.1958, M.L. Sethi lodged a First Information Report against R.P. Kapur and alleged that he and his mother-in-law had committed offences under Sections 420-109, 114 and 120B of the Indian Penal Code. R.P. Kapur moved the Punjab High Court under Section 561-A of the Code of Criminal Procedure for quashing the proceedings initiated by the First Information Report. When the petition of R.P. Kapur was pending in the High Court, the police report was submitted under Section 173, Cr.P.C. and the High Court held that no case had been made out for quashing the proceedings under Section 561-A of the Criminal Procedure Code, 1898 and dismissed the petition. R. P. Kapur carried an appeal by way of Special Leave to this Court and this Court dismissed the appeal for inter alia the following reasons:

" In the present case the magistrate before whom the police report has been filed under S. 173 of the Code has yet not applied his mind

to the merits of the said report and it may be assumed in favour of the appellant that his request for the quashing of the proceedings is not at the present stage covered by any specific provision of the Code. It is well established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily, criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage..."

As we have found in the present case that learned Magistrate had not applied his mind to the merits of the reports filed under Section 173, Cr.P.C., we are of the considered opinion that the exercise of power by the High Court under Section 482, Cr.P.C., was at an interlocutory stage and was not warranted in the facts of this case."

At this stage, learned counsel for the applicant submits that the inherent powers under Section 482 Cr.P.C. can also be exercised in a case, if, the criminal proceedings against the accused are attended with malafide intentions and the case of the applicant would also fall within the ambit of such cases where the exercise of powers under Section 482 Cr.P.C. is justified.

At this juncture, this Court deems it appropriate to refer the decision of Hon'ble Supreme Court in the case of **State of Haryana and others Vs. Ch. Bhajan Lal and others, reported in 1991 (1) R.C.R. (Criminal), 383** wherein the Apex Court while analyzing the exercise of inherent powers of the High Court vested through Section 482 Cr.P.C., laid down the following guidelines :

"The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482, Cr. P.C. can be exercised by the High Court 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 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 or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide 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.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

The above view was again reiterated by the Hon'ble Supreme Court in the case of **Pepsi Foods Ltd. and Ors. Vs. Special Judicial Magistrate and Ors., reported in 1997 (4) R.C.R. (Criminal), 761** and in the said case, Hon'ble Supreme Court while examining the powers of the High Court under Section 482 Cr.P.C. laid down as under :

"It is settled that High Court can exercise its power of judicial review in criminal matters. In State of Haryana and others Vs. Bhajan Lal and others, 1992 Supp (1) ACC, 335, this court examined the extraordinary power under

Article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guideline is 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....."

Now, while testing the applicant's case and considering the argument raised by learned counsel for the applicant that since Chandrabhan Singh is not involved in the subsequent transaction dated 22.11.2018, therefore, he can not be accused of any offence for causing wrongful loss to the complainant, Reeta Sharma, much less in the absence of any wrongful gain by him, the prosecution against him, is without any basis, this Court finds that as per prosecution, the applicant was a witness to the first sale deed 03.06.2017, and the land sold by Ramnarain through both the sale deeds is the same, therefore, once the applicant was aware that Ramnarain has already sold the land to Jaiprakash, therefore, it was very much in his

knowledge that the land does not belong to Ramnarain for entering into subsequent transaction.

Admittedly, in the agreement to sell dated 13.11.2018, the applicant is signatory as witness and at that stage he identified the vendor Ramnarain to Santosh Kumar Sharma, husband of the complainant-Reeta Sharma. Notably, Shailendra another witness to agreement to sell like the applicant is not made accused as he was not a witness to the earlier sale deed dated 03.06.2017, therefore, the argument of learned counsel for the applicant that his case is at par with Shailendra is misconceived, as his case stands on different footings. In view of this, it can be safely concluded that the facts and circumstances of this case do not make out a case for exercise of inherent powers under Section 482 Cr.P.C., as it is not a case, where if, the allegations are taken to be true on its face value, no case against the applicant-accused is made out. Thus, without expressing any opinion on merits of the case, this Court is not inclined to exercise the inherent powers under Section 482 Cr.P.C.

Resultantly the application fails and is accordingly, dismissed.

Order Date :- 29.11.2023

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