

Court No. - 93

Case :- APPLICATION U/S 482 No. - 44681 of 2023

Applicant :- Gaurav

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Vinod Shankar

Tripathi,Vishwambhar Nath

Counsel for Opposite Party :- G.A.

Hon'ble Manoj Bajaj,J.

1. Applicant has filed this application under Section 482 Code of Criminal Procedure for quashing the charge sheet dated 5.5.2023 filed under Section 173(2) Cr.P.C., in Case Crime No. 197 of 2023 registered under Sections 457, 380, 411, 413 IPC, Police Station Shamli, District Shamli as well as the cognizance order dated 31.5.2023 passed by District and Sessions Judge, Shamli and the proceedings arising therefrom.

2. Learned counsel for the applicant submits that as per the allegations in the F.I.R., the alleged offence of theft was committed by unknown persons, but subsequently, during the investigation, co-accused Sanju and Shiva were apprehended, and stolen articles including gold and cash were recovered from them. He submits that on the basis of the statement made by co-accused namely, Sanju, applicant has been implicated as a co-accused as some of the jewellery was stated to be in the possession of the applicant. He submits that final report submitted in the case implicates the applicant for alleged commission of offence punishable under Section 413 I.P.C. and since the applicant is not involved in any other case, therefore, no case punishable under Section 413 I.P.C. would be made out. He prays that impugned criminal proceedings qua the applicant be quashed, in the interest of justice.

3. During the course of hearing, it is not disputed by learned counsel that as per the prosecution, the

accused persons entered in the house of the complainant and committed theft of jewellery, cash etc. and the stolen articles were recovered from the co-accused namely, Sanju and Shiva. Since the case of the prosecution against the applicant is regarding receiving the stolen property and merely because, the applicant is not involved in any other case of similar nature, it cannot be said that the case of the prosecution is baseless. Admittedly, final report submitted by the police, under Section 173(2) Cr.P.C. is yet to be considered by the trial court as the charges have not been framed so far.

4. Upon hearing the learned counsel and considering his submissions, this Court is of the view that as the final report is yet to be examined by the Magistrate, therefore, at this stage, it would not be appropriate for this Court to exercise inherent powers under Section 482 CrPC. Here, it will be useful to refer the decision of Hon'ble Supreme Court delivered in **Dharmatma Singh vs. Harminder Singh & Ors.** reported in **Criminal Appeal No.1126 of 2011 (3) RCR Criminal 38** wherein 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."

5. In view of the above background of the case as well as law laid down by Hon'ble Supreme Court, this Court without meaning any expression of opinion on the merits of the case, does not find it to be a fit case for exercise of inherent powers under Section 482 CrPC. However, it shall be open for the applicants to raise all the grounds pleaded in this application, before the trial court at an appropriate stage.

6. The application is dismissed.

Order Date :- 15.12.2023
P.S.Parihar