

Court No. - 16

Case :- APPLICATION U/S 482 No. - 9972 of 2023

Applicant :- Shyamanand Chaubey @ S.N. Chaubey

Opposite Party :- State Of U.P. Thru. Superintendent Police
Central Bureau Investigation Lko

Counsel for Applicant :- Dharendra Singh Panwar

Counsel for Opposite Party :- Anurag Kumar Singh

Hon'ble Subhash Vidyarthi,J.

1. प्रार्थी के विद्वान अधिवक्ता श्री धीरेंद्र सिंह पंवार तथा विपक्षी-केंद्रीय अन्वेषण ब्यूरो के अधिवक्ता श्री अनुराग कुमार सिंह के सहायक अधिवक्ता श्री धरमेन्द्र प्रताप सिंह को सुना तथा पत्रावली का अवलोकन किया।
2. इस आरोप पत्र द्वारा प्रार्थी ने मुकदमा अपराध संख्या 1204 सन् 2022 अन्तर्गत धारा 120B, 409, 420, 471, 477A भा०द०वि० तथा भ्रष्टाचार निवारण अधिनियम 1988 की धारा 13(2) r/w 13(1)(d), थाना ए.सी.बी./सी.बी.आई जिला लखनऊ में आरोप पत्र की वैद्यता को चुनौती देते हुए उसे निरस्त करने की मांग की है।
3. आरोप पत्र की वैद्यता को इस आधार पर चुनौती दी गई है कि प्रार्थी निर्दोष है, उसका कोई आपराधिक इतिहास नहीं तथा उसने विवेचना में सहयोग किया है।
4. "माननीय सर्वोच्च न्यायालय ने **स्टेट ऑफ हरियाणा बनाम भजन लाल 1992 Supp(1) SCC 335** में कथन किया है, जो इस प्रकार है:-

“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 or 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.

103. 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."

5. उपरोक्त निर्णय का अनुपालन करते हुए ऐसा कोई आधार प्रतीत नहीं होता है जो प्रस्तुत मामले में आरोप-पत्र के निरस्तीकरण के लिए कहे गए आधारों में की गई आरोप पत्र निरस्तीकरण की शर्तों में से किसी भी शर्त को पूरा करते हों।

6. प्रार्थना पत्र बल हीन है तथा इस आधार पर निरस्त किया जाता है।

7.यदि प्रार्थी नियमित जमानत हेतु प्रार्थना-पत्र प्रस्तुत करता है तो उसे अग्रिम जमानत प्रार्थना-पत्र के निरस्तीकरण से प्रभावित हुए बिना, गुण-दोष के आधार पर विधि अनुसार **सतेंद्र कुमार अंतिल बनाम सी०बी०आई० (2022) 10 SCC 51** में प्रतिपादित सिद्धांत के अनुसार किया जाएगा।

Order Date :- 12.10.2023

Himanshu