

Court No. - 16

Case :- APPLICATION U/S 482 No. - 11110 of 2023

Applicant :- Abhay Singh

Opposite Party :- State Of U.P. Thru. Prin. Secy. U.P. Lko.
And Another

Counsel for Applicant :- Anuj Pandey, Ashish Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Ashish Kumar Singh, the learned counsel for the applicant, Sri Anurag Verma, the learned A.G.A.-I for the State and perused the records.

2. By means of the instant application filed under Section 482 Cr.P.C. the applicant has sought quashing of the summoning order dated 06.12.2022 along with Charge Sheet No.3 of 2022, dated 21.11.2022 filed in Case Crime No.181 of 2020, under Sections 307, 120-B, 34, 182, 195, 420 I.P.C. Police Station Alambagh, District Lucknow pending in the Court of learned Judicial Magistrate-III, Lucknow.

3. The aforesaid case has been registered on the basis of an F.I.R. lodged on 14.07.2020 by the applicant himself alleging an attack by 4-5 unknown miscreants who were armed with automatic weapons and the informant alleged that the attack was made at the behest of ex-M.P. Dhananjay Singh, who was lodged in jail and had threatened the informant at 4-5 previous occasions. The F.I.R. alleges that the informant's private driver had suffered two gun shot injuries in his abdomen. During investigation the Investigating Officer recorded statements of as many as forty persons and also scrutinized CCTV footage and found that the informant had himself planned the incident along

with his accomplices for obtaining a gunner at the government expenditure. The charge sheet has been submitted when it was established on the basis of evidence collected during investigation that the applicant had himself planned a fake attack with the aforesaid objective.

4. The learned counsel for the applicant has submitted that the applicant has been implicated solely on the basis of statements of witnesses recorded under Section 161 Cr.P.C. which is not admissible in evidence.

5. The learned Government Advocate has vehemently opposed the application for quashing of the proceedings and he has submitted that while entertaining an application under Section 482 Code of Criminal Procedure this court can merely see as to whether or not the allegation levelled against the applicant in the charge-sheet make out a prima facie case for trial of the applicant for the alleged charges. He has relied upon the judgments in the cases of **Arun Bhandari v. State of U.P. & ors.**, (2013) 2 SCC 801; **C.B.I. v. Arvind Khanna**, (2019) 10 SCC 686; **Priti Saraf & anr. v. State of NCT of Delhi & anr.**, AIR 2021 SC 1531; and **C.B.I. v. Aryan Singh & ors.**

6. In **C.B.I. v. Arvind Khanna (supra)** the Hon'ble Supreme Court has held that defence of the accused is to be tested after appreciating the evidence during trial. In **C.B.I. v. Aryan Singh (supra)** the Hon'ble Supreme Court set aside an order passed by the Punjab and Haryana High Court allowing an application under Section 482, Cr.P.C. and the Hon'ble Supreme Court held that it appears that the High Court has dealt with the proceeding before it, as if the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principal of law, at the

stage of discharge and/or quashing of the criminal proceedings while exercising the powers under Section 482, Cr.P.C. the Court is not required to conduct a mini trial. The relevant extract of the aforesaid judgement is quoted hereinbelow:-

"4.1. From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers Under Section 482 Code of Criminal Procedure, the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the Accused are not proved. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the Accused, at this stage. At the stage of discharge and/or while exercising the powers Under Section 482 Code of Criminal Procedure, the Court has a very limited jurisdiction and is required to consider "whether any sufficient material is available to proceed further against the Accused for which the Accused is required to be tried or not".

7. In **Indian Oil Corporation v. NEPC India Ltd. and ors.** (Supra), the Hon'ble Supreme Court has held that *"A complaint can be quashed where the allegations made in 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 the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an*

assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint. The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

8. The learned A.G.A.-I has also submitted that the applicant has approached this Court with a prayer for invoking its extraordinary powers vested in it under Section 482 Cr.P.C. While invoking the aforesaid discretionary powers the applicant has concealed the material fact of his involvement in 34 criminal cases. The applicant has also concealed the fact that he has filed an application for grant of anticipatory bail, which has been allowed. The learned A.G.A. has relied upon a judgment of Hon'ble Supreme Court in the cases of ***Rajeev Kourav Vs. Baisahab and others: Crl. Appeal No.232 of 2020***, wherein the Hon'ble Supreme Court has held that " *it is no more res integra that exercise of power under Section 482 CrPC to quash a criminal proceeding is only when an allegation made in the FIR or the charge sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of process of any Court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the Court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal*

proceeding."

9. In the case of Rajeev Kaurav (supra) the Hon'ble Supreme Court has set aside the order passed by the High Court quashing criminal proceedings on the basis of its assessment of statements recorded under Section 161 Cr.P.C. by holding that the statements of witnesses recorded under Section 161 Cr.P.C. cannot be taken into consideration by the Court while adjudicating a petition filed under Section 482 Cr.P.C.

10. Moreover, a bare perusal of the charge sheet indicates that the applicant has not been implicated solely on the basis of statements recorded under Section 161 Cr.P.C. but also after examination of CCTV footage of the cameras installed at the spot of occurrence.

11. In view of the aforesaid discussion, this Court does not find any merit in the instant application.

12. The application is accordingly **rejected**.

13. The Trial Court shall proceed with and decide the case on its merits expeditiously, without being influenced by any observation made in this order.

.

(Subhash Vidyarthi J.)

Order Date :- 17.11.2023

Ram.