

Court No. - 11

Case :- APPLICATION U/S 482 No. - 11603 of 2023

Applicant :- Vakil Ahmad And 4 Others

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

Counsel for Applicant :- Rajesh Kumar Srivastava, Praveen Singh

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania, J.

Heard learned counsel for the applicant and learned AGA for the State and perused the record.

The present petition has been filed for the following main relief:-

"Wherefore it is most respectfully prayed that this Hon'ble Court may kindly be pleased to quash the summoning order dated 17.05.2023 as well as entire proceeding of the complaint case no. 10418/2023, Shabana @ Taniya Vs. Vakil Ahmad & Others, under Section 323/504/506 IPC, P.S.- Alambagh, Lucknow pending in the court of Judicial Magistrate III, Lucknow contained as Annexure No. 1 & 5 to this petition passed by the court below in the interest of justice."

Brief facts of the case, as appears, are to the effect that on account of demand of Rs. 5,00,000/-, an altercation took place 21.02.2015 and one Shakil (husband of opposite party no.2/Smt. Shabana alias Taniya) lodged the FIR on 25.02.2017 as Case Crime No. 0168 of 2017 under Section 147/392/504/506/420/323 IPC, Police Station Hasanganj, District Lucknow against the applicant nos. 1 to 5. Thereafter the accused in Case Crime No. 0168 of 2017, approached this Court by means of filing Application U/s 482/378/407 No. 8849 of 2019 (Vakil Ahmad and others Versus State of U.P. and Others) and this Court upon due consideration declined to entertain the same as appears from the order dated 12.12.2019, which reads as under:-

"1. Heard learned counsel for the petitioners as well as learned Additional Government Advocate and perused the record.

2. This petition under Section 482 Cr.P.C. seeks quashing of entire proceedings of Case No.665 of 2018, arising out of FIR No.168 of 2018 'State Vs. Vakil Ahmad and others', under Sections 147, 323, 504, 506, 420 and 406 IPC, lodged at Police Station Hasanganj, District Lucknow, pending in the Court of Judicial Magistrate-II, Lucknow as well as charge-sheet dated 6th March, 2018 filed in the said FIR, and order of taking cognizance dated 18th September, 2018.

3. After arguing at some length, learned counsel for the petitioners submits that he would like to file an application for discharge under the provisions of the Cr.P.C. to which learned counsel for the State does not dispute.

4. Accordingly, the petitioners are granted liberty to file an application before the trial Court concerned in conformity with the provisions of Cr.P.C. within a period of fifteen days from today, which shall be considered and decided by the trial Court expeditiously, preferably within next forty-five days. The petitioners are also granted liberty to appear through counsel.

5. Till expiry of aforesaid period of sixty days, no coercive steps shall be taken against the petitioners.

6. With the aforesaid observations/directions, the petition stands disposed of."

It has been indicated that in terms of order of this court dated 12.12.2019 the discharge application has been moved and the same is pending consideration before the trial court.

During the pendency of the aforesaid application, a complaint case dated 06.01.2023 was filed by the opposite party no. 2 namely Shabana alias Taniya wife of Shakil Khan (informant of case crime no. 0168 of 2017). In the complaint it has been stated that during the investigation of case crime no. 0168/2017, the Investigating Officer dropped the names of Afroz, Sarfuddin, Munna, Tille, Naseem Bano and Subi and thereafter a protest application dated 22.12.2022 was filed and on coming to know about the protest application, on 06.01.2023 the opposite parties came to the house of the complainant and created pressure for withdrawing the protest application and on denial they assaulted the complainant Shabana with fists and kicks, tore the clothes and also molested the complainant. Before the trial court the statement(s) of Shabana and Yatish Ahirwar and Nushrat were recorded as required under Section(s) 200 and 202 Cr.P.C. and complainant in her statement supported the case set up in the complaint both the witnesses stated that altercation took place on 06.01.2023 i.e. the date of incident indicated in the complaint by the complainant.

The trial court after considering the statement(s) of complainant and witnesses namely Yatish Ahirwar and Nushrat, passed the impugned order dated 17.05.2023, whereby summoned the applicants/accused.

Assailing the order impugned dated 17.05.2023, the learned Counsel for the applicants stated that as per the judgment passed by the Hon'ble Apex Court in the case of ***Pepsi Foods Ltd. and another Versus Special Judicial Magistrate and Others*** reported in ***1998 SCC (Cri) 1400***, the Magistrate was under obligation to put questions to the witnesses and in the instant case no question was put by the Magistrate and the Magistrate concerned only relied upon the statement(s) made under Section(s) 200 and 202 Cr.P.C. while passing the summoning order against the applicants, thus, the order impugned is unjustified and is liable to be interfered by this Court. To support his contention, learned Counsel for the applicant has relied upon para 28 of the judgment passed in the case of ***Pepsi Foods (Supra)***, which reads as under:

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

Learned A.G.A. has opposed the present application. He submitted that the Magistrate is not under obligation to put question and the Hon'ble Apex Court only observed that Magistrate may put question to satisfy himself. As such the submission of the learned Counsel for the applicants that Magistrate is under obligation to put question to the complainant and witnesses prior to issuance of summoning order, is unsustainable.

Considered the submissions advanced by learned Counsel for the parties and perused the record.

The only question which is to be answered is as to whether the Magistrate is under obligation to put question to the complainant and his/her witnesses in support of the complainant while recording the statements under Section(s) 200 and 202 Cr.P.C.

From a bare perusal of the judgment passed in the case of ***Pepsi Foods Ltd. (Supra)*** referred by learned Counsel for the applicants, it is apparent that Hon'ble Apex Court has observed that "The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused".

From the aforesaid, it is apparent that the Hon'ble Apex Court has not held that in every case it is the duty of the Magistrate to put question to the complainant and his/her witnesses.

Thus, the argument of learned Counsel for the applicants as indicated above, has no force. Further, it appears from the impugned order dated 17.05.2023 that Magistrate after considering the statement(s) recorded by the complainant and her witnesses, as required under Section(s) 200 and 202 Cr.P.C., has passed the order impugned. Thus, there is no illegality in the impugned order.

For the reasons aforesaid, this Court is not inclined to interfere in the order impugned dated 17.05.2023 and as such, the present application is liable to be dismissed. It is accordingly ***dismissed***. No order as to costs.

Order Date :- 29.11.2023

Jyoti/-