

Court No. - 11

Case :- APPLICATION U/S 482 No. - 12345 of 2023

Applicant :- Juber

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

Counsel for Applicant :- Avinash Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

Heard Sri Avinash Kumar Srivastava, learned counsel for the applicant as well as learned A.G.A. for the State and perused the record.

The instant application has been filed by the applicant with a prayer to quash the entire criminal proceedings as also summoning order dated 06.05.2022 and the proceedings of Case No. 1013 of 2022 (State of U.P. Vs. Juber), arising out of Case Crime No. 116 of 2017, PS-Safdarganj, District-Barabanki, under Sections 376D, 354, 452, 504, 506 I.P.C pending before Additional Chief Judicial Magistrate, Court No.19, District-Barabanki.

Learned counsel for the applicant vehemently submitted that a false first information report was lodged by the opposite party No.2 against the applicant, who, at the time of incident was of 50 years and after thorough investigation, closure report (F.R.) has been submitted by the Investigating Agency. However, on a protest petition filed by the opposite party no.2, the order pertaining to further investigation was made.

It is also submitted that after further investigation also the final report was filed as the complicity of the accused persons was not found. However, on another protest petition filed by the opposite party no.2, the trial court had summoned the applicant to face trial for committing offence under Section 376-D, 354, 452, 504, 506 I.P.C. with further direction that the case shall run as a State case instituted on police report.

It is further submitted that when the allegations of the first information report were not found truthful in the first two investigation made by the different police personnel, there was nothing before the trial court on the basis of which the cognizance should have been taken on the first information report under Section 190(1)(b) Cr.P.C. and at the most even if

there was some material duty of the court was to take cognizance under Section 191 (a) as a complaint case.

It is further submitted that though the statement of the prosecutrix / victim was recorded under Section 164 Cr.P.C. but in her protest petition she had stated that she had given statement of under Section 164 Cr.P.C. to the Investigating Officer which he did not keep on the case diary. Thus, material illegality has been committed by the trial court.

Learned counsel for the applicant has also relied on a judgment of Hon'ble the Supreme Court in the case of **Vineet Kumar Vs. State of U.P.; AIR 2017 SC 1884** specially on para 2, 5, 7, 13, 22, 26, 28, 29, 37, 38 and 40.

Learned A.G.A. on the other hand submits that at the stage of summoning, matriculates examination of the evidence is not required and only prima facie case is to be seen for further proceedings and the evidences / material available on record is not to be analyzed / appreciated as is required at the time of final culmination of the trial. Thus, no illegality has been committed by the trial court by passing the impugned order.

Having heard learned counsel for the parties and having perused the record, it is evident that it was twice closure report / final report was submitted by the Investigating Officer and at the first instance an order for further investigation was passed by the Magistrate and on second occasion, the Magistrate has taken the cognizance under Section 191(b) Cr.P.C., as a police case. The trial court while taking the decision to treat the case as a police case and taking cognizance under Section 190(1)(b) as been guided by a Division Bench Judgment of this Court in **Pakhandu and Ors. Vs. State of U.P. and Ors. reported in MANU/UP/0911/2001**.

For ready reference, the relevant part of the judgment is reproduced as under:-

"(15) FROM the aforesaid decisions, it is thus clear that where the Magistrate receives final report the following four courses are open to him and he may adopt any one of them as the facts and circumstances of the case may require :-

(I) He may agreeing with the conclusions arrived at by the police, accept the report and drop the proceedings. But before so doing, he shall give an opportunity of hearing to the complainant; or (II) He may take cognizance under Section 190 (1) (b) and issue process straightway to the accused without being bound by the conclusions of the investigating agency, where he is satisfied that upon the facts discovered or unearthed by the police, there is sufficient ground to proceed; or (III) he may order further investigation, if he is satisfied that the investigation was made in a

perfunctory manner, or. (IV) he may, without issuing process or dropping the proceedings decide to take cognizance under Section 190 (1) (a) upon the original complaint or protest petition treating the same as complaint and proceed to act under Sections 200 and 202, Cr. P. C. and thereafter decide whether complaint should be dismissed or process should be issued.

(16) WHERE the Magistrate decides to take cognizance of the case under Section 190 (1) (b) of the Code ignoring the conclusions arrived at by the investigating agency and applying his mind independently to the facts emerging from the investigation records, in such a situation the Magistrate is not bound to follow the procedure laid down in Sections 200 and 202 of the Code, and consequently the proviso to Section 202 (2), Cr. P. C. will have no application. It would however be relevant to mention that for forming such an independent opinion the Magistrate can act only upon the statements of witnesses recorded by the police in the case diary and other material collected during investigation. It is not permissible for him at that stage to make use of any material other than investigation records, unless he decides to take cognizance under Section 190 (1) (a) of the Code and calls upon the complainant to examine himself and the witnesses present if any under Section 200."

Thus, the above placed observation of the Division Bench of this Court is suffice to indicate that when the Magistrate has considered only the material submitted to him with the police report filed under Section 173(2) Cr.P.C., he under an appropriate case can take cognizance under Section 191 (b) Cr.P.C. (on police report) ignoring the conclusions drawn by the Investigating Officer. In this regard, the law laid down by Hon'ble the Supreme Court in **India Carat Pvt. Ltd. Vs. State of Karnataka; MANU/SC/0349/1989** and **Tularam Vs. Kishore Singh; MANU/SC/0163/1977** may be considered.

The above observation would reveal that there is no illegality in the order of the trial court whereby the trial court has taken cognizance under Section 191 (b) Cr.P.C. and have directed that the case shall be treated as a police as. All the grounds which have been taken by the applicant in the instant application may be taken at the time of framing of charges but the disputed question of facts could not be gone into by this Court in proceedings under Section 482 Cr.P.C. as at this stage only prima facie case is to be seen in the light of the law laid down by Supreme Court in the cases of **R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866**, **State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426**, **State of Bihar Vs. P.P.Sharma, 1992 SCC (Cr.) 192**, **Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq, another (Para-10) 2005 SCC (Cr.) 283**, **Parabatbhai Ahir & Ors. Vs. State of Gujarat AIR 2017 SC 4843** and lastly **State of Gujrat Vs Afroz Mohammed Hasanfatta reported in MANU/SC/0139/2019** .

Therefore, keeping in view the facts and circumstances of the

case, the prayer for quashing the Charge-sheet, summoning order as well as all proceedings of the aforesaid case is hereby **refused.**

The Hon'ble Supreme Court in the cases of **Hussain and Ors. Vs. Union of India (UOI) and Ors. reported in MANU/SC/0274/2017**, In Re: To issue certain Guidelines Regarding inadequacies and deficiencies in **Criminal Trials v. State of Andhra Pradesh and others, MANU/SC/0292/2021 and Satender Kumar Antil Vs. Central Bureau of Investigation and others : (2021) 10 SCC 773** have given various directions to criminal Courts for expeditious disposal of Bail applications. The ratio of above mentioned decisions is quite clear that, in the backdrop of Article 21 of the Constitution of India as the personal liberty of a person is at stake, the bail application should be decided, expeditiously.

In the backdrop of aforesaid decisions and keeping in view the entirety of facts and circumstances of the case and having regard to the request of learned counsel for the applicant, the application is disposed of with direction to the trial Court that if the applicant appear and surrender before the Court below within **15 days from today** and apply for bail, his prayer for bail shall be considered and decided expeditiously by the Court below strictly in accordance with the law referred to herein above.

If the opposite party No.2 feels aggrieved by this order, she may approach this Court by moving an appropriate application.

With the aforesaid, the application under Section 482 Cr.P.C. is **disposed of.**

Order Date :- 18.12.2023

Vinay/-