

HIGH COURT OF JUDICATURE AT ALLAHABAD

(Sl No.3031)

Court No. - 79

Case :- APPLICATION U/S 482 No. - 12692 of 2019

Applicant :- Kashi Nath

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Rajrshi Gupta,Dileep Kumar,Lakshmi
Kant Pandey,Sunil Kumar Pandey

Counsel for Opposite Party :- G.A.,Vinod Kumar

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Dileep Kumar Singh, learned Senior Counsel assisted by Sri Lakhmi Kant Pandey, learned counsel for the applicant, Sri Vinod Kumar, learned counsel for the opposite party no.2 and Sri Pankaj Srivastava, learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the impugned summoning dated 29.08.2018 in Case No.477 of 2016 (Vijay Kumar vs. Ram Dulare and Kashi Nath) u/S 452, 323, 504 I.P.C., pending in the court of learned Chief Judicial Magistrate, Chandauli.

3. Learned Senior Counsel for the applicant submits that the instant complaint filed by the opposite party no.2 was lodged after nine months of the incident and as a counterblast to the F.I.R. lodged on behalf of the applicant against the opposite party no.2, in which the charge-sheet was already filed on 16.06.2016 and the cognizance was taken on 25.08.2017.

4. Learned Senior Counsel for the applicants submits that while taking the cognizance in the complaint case filed by the opposite party no.2, though in the complaint it was disclosed that a cross case has already been filed by the applicant herein the Magistrate has not taken pain to inquire about the outcome of the said case lodged by the applicant herein and without inquiring into the same the cognizance has been taken, therefore, the same is vitiated.

5. With regard to his submissions, learned Senior Counsel for the applicant has relied upon the judgement of the Apex Court in ***M.N. Ojha & Ors. vs. Alok Kumar Srivastav and Another : 2009 9 SCC 682***, specifically paragraphs no. 21 to 32, therefore, learned counsel for the applicant submits that the instant complaint is nothing but a counterblast complaint on behalf of the opposite party no.2, who was an accused in the case registered by the applicant herein. Therefore, he prays for quashing of the summoning order as well as the entire proceeding of the aforesaid complaint case.

6. *Per contra*, learned counsel for the opposite party no.2 submits that on the date of incident itself the opposite party no.2 has approached the Police Authorities, however, under the influence of the applicants herein the Police Authorities did not register the F.I.R. on his behalf and has only registered the F.I.R. on behalf of the applicant and he was directed to get his injuries examined through the appropriate Medical Officer.

7. In pursuance thereof, he has approached to Pandit Kamla Pati District Hospital Chandauli where on the date of incident itself his injuries were examined and injury report has been annexed as Annexure '2' to the instant application.

8. Learned counsel for the opposite party no.2 further submits that since after the medical examination he again approached the Police Authorities, however, being under the influence of the

applicant herein, the Police Authorities did not register the F.I.R., thereupon, he was running from pillar to post to get his F.I.R. registered. Thereupon, he approached the Senior Police Officers when no action was taken, then, he has lodged the present application under Section 156(3) Cr.P.C., which was later converted as a complaint case.

9. Learned Senior Counsel for the applicant has relied upon Annexure '8' to contend that the opposite party no.2 has first time approached the Superintendent of Police, Chandauli on 22.09.2016.

10. Learned counsel for the opposite party no.2 submits that initially when the Police Authorities have refused to registered the F.I.R., immediately thereafter, he has approached the Senior Police Officers and repeatedly met the Senior Police Officers, however, his complaints were not registered, thereafter, lastly on 22.09.2016, he has sent the aforesaid complaint to the Senior Superintendent of Police by registered post.

11. Learned A.G.A. submits that there are two version of the same incident. The two versions can be appreciated only during the trial of the case. At such a preliminary stage no definite opinion can be formed without leading of the evidence before the trial court. Since, the cross versions are there, the applicant has also not denied the involvement in the incident. Who was the aggressor, it is to be determined during the trial.

12. Having heard the rival submissions advanced by learned counsels for the parties, this Court has carefully gone through the record of the case. From the record it is apparent that for the incident dated 25.01.2016 at about 2:00 P.M., the incident of assault has taken place by both sides, therefore, both sides do not dispute their presence at the time of incident or the happening of incident as such. However, both sides have their own versions

with regard to the incident and which version is true and which is wrong and who was the actual aggressor, is the subject matter of trial. From the perusal of the complaint of the opposite party no.2, he has categorically disclosed with regard to the pendency of the cross case on behalf of the applicant herein, therefore, it cannot be said that the opposite party no.2 has not approached the trial court with clean hands and from the incident both sides have also alleged that they have sustained injuries in the aforesaid incident. The aforesaid opposite party no.2 was also examined on the same day and injuries were found on the body. Therefore, it has often been seen that aggressor in the cases approach to the Police Authorities at the first instant and the victim approaches the Police Authorities later and his version is not recorded by the police and only the version of the aggressor are recorded and the victim continuous to run from pillar to post to get his case registered and finally he approaches the Court to register his case.

13. The Judgement of the Apex Court in *M.N. Ojha (supra)*, which has been relied upon by the learned Senior Counsel for the applicant reads as under:

"21. In our considered view, criminal law has been set in motion by the complainant to harass the bank officers needlessly and to wreak personal vengeance in order to bring them under pressure not to further prosecute the proceedings already initiated by the appellants against the complainant on behalf of the Bank.

22. In our considered opinion, the learned SDJM set the criminal law in motion against the appellants without even examining the allegations and averments made in the complaint filed by the respondent complainant. The learned SDJM took cognizance of the case without considering the allegations on merits.

23. Had the learned SDJM perused the complaint properly he would have realised that the complainant himself had made a mention about the lodging of the FIR for criminal breach of trust and other offences against the respondent complainant and others. Had he looked into the complaint properly, he would have certainly asked the complainant to furnish a copy of the said FIR.

24. A copy of the legal notice issued on behalf of the respondent complainant to the appellants was filed along with the complaint and a mention is made about it in the order passed by the learned SDJM. Had the learned SDJM perused the said legal notice, he

would have realised that the complainant himself admitted about his execution of agreement of guarantee and other documents unconditionally agreeing to discharge the loan amount in case of failure of the principal borrower to pay the said amount to the Bank.

25. Had the learned SDJM applied his mind to the facts and circumstances and sequence of events and as well as the documents filed by the complainant himself along with the complaint, surely he would have dismissed the complaint. He would have realised that the complaint was only a counterblast to the FIR lodged by the Bank against the complainant and others with regard to the same transaction.

26. This Court in *Pepsi Foods Ltd. v. Special Judicial Magistrate* [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400] held: (SCC p. 760, para 28)

"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 scrutinise 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."

27. The case on hand is a classic illustration of non-application of mind by the learned Magistrate. The learned Magistrate did not scrutinise even the contents of the complaint, leave aside the material documents available on record. The learned Magistrate truly was a silent spectator at the time of recording of preliminary evidence before summoning the appellants.

28. The High Court committed a manifest error in disposing of the petition filed by the appellants under Section 482 of the Code without even adverting to the basic facts which were placed before it for its consideration.

29. It is true that the Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure cannot go into the truth or otherwise of the allegations and appreciate the evidence if any available on record. Normally, the High Court would not intervene in the criminal proceedings at the preliminary stage/when the investigation/enquiry is pending.

30. Interference by the High Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure can only be where a clear case for such interference is made out.

Frequent and uncalled for interference even at the preliminary stage by the High Court may result in causing obstruction in progress of the inquiry in a criminal case which may not be in the public interest. But at the same time the High Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no fair minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint.

31. *It is well settled and needs no restatement that the saving of inherent power of the High Court in criminal matters is intended to achieve a salutary public purpose "**which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution.** [If such power is not conceded, it may even lead to injustice.]" (See State of Karnataka v. L. Muniswamy [(1977) 2 SCC 699 : 1977 SCC (Cri) 404] , SCC p. 703, para 7.)*

32. *We are conscious that "inherent powers do not confer an arbitrary jurisdiction on the High Court to **act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases**". (See Kurukshetra University v. State of Haryana [(1977) 4 SCC 451 : 1977 SCC (Cri) 613] , SCC p. 451, para 2.)*

33. *This is one case where the averments and allegations made in the complaint do not disclose the commission of any offence by the appellants or any one of them. They were merely discharging their duties to realise and recover the amounts due to the Bank from the borrower as well as the guarantors. The complaint obviously has been filed as a counterblast to the proceedings already initiated by the Bank including the first information report lodged by the first appellant against the complainant and the borrower for the offences of cheating and misappropriation.*

34. *Sequence of events undoubtedly suggests that the criminal proceedings have been maliciously instituted with an ulterior motive of wreaking vengeance on the appellants and with a view to spite them due to personal grudge. It was clearly intended to prevent the public servants from discharging their duties. The criminal law has been set in motion by the learned SDJM on mere asking to do so by the complainant.*

35. *The High Court almost abdicated its duty in refusing to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure though the case on hand required its interference in order to prevent abuse of the process by a court subordinate to it. A clear case is made out requiring our interference to secure the ends of justice. "*

14. From the close reading of the aforesaid observations made by the Apex court in the light of the peculiar facts of the case before the Apex Court, the judgements of the Apex Court in ***State of Haryana and others vs. Bhajan Lal and others, 1992 Supp. (1) SCC 335*** as well as ***Neeharika Infrastructure (P) Ltd. v. State of Maharashtra, (2021) 19 SCC 401*** categorically lays down the principles in which the High Courts can interfere and quash the proceedings.

15. In ***Bhajan Lal (supra)***, the Apex Court has laid down the following categories where the High Courts can exercise the power to quash the criminal proceedings, which reads as under:

"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."

(Emphasis supplied)

16. In *Neeharika (supra)*, the Apex Court has made the following observations, which reads as under:

"33. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482CrPC and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/charge-sheet is filed under Section 173CrPC, while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482CrPC and/or under Article 226 of the Constitution of India, our final conclusions are as under:

33.1. Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence.

33.2. Courts would not thwart any investigation into the cognizable offences.

33.3. It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on.

33.4. The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the "rarest of rare cases" (not to be confused with the formation in the context of death penalty).

33.5. While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

33.6. Criminal proceedings ought not to be scuttled at the initial stage.

33.7. *Quashing of a complaint/FIR should be an exception rather than an ordinary rule.*

33.8. *Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere.*

33.9. *The functions of the judiciary and the police are complementary, not overlapping.*

33.10. *Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.*

33.11. *Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.*

33.12. *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.*

33.13. *The power under Section 482CrPC is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court.*

33.14. *However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in R.P. Kapur [R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21 : AIR 1960 SC 866] and Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , has the jurisdiction to quash the FIR/complaint.*

33.15. *When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482CrPC, only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR.*

33.16. *The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482CrPC and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically.*

Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438CrPC before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/charge-sheet is filed under Section 173CrPC, while dismissing/disposing of the quashing petition under Section 482CrPC and/or under Article 226 of the Constitution of India.

33.17. Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482CrPC and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

33.18. Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

17. In view of the broad principles laid by the Apex Court if we examine the facts of the instant case, as the version of the opposite party no.2 in his complaint the applicants were trying to encroach upon the land of the opposite party no.2, which was protested by the opposite party no.2, thereupon, the incident has taken place. The applicant does not dispute their involvement in the incident and it has also not been disputed that the opposite party no.2 has also sustained injuries in the incident, which was examined on the day of the incident itself in the Government Hospital. Therefore, this Court does not find any good reason to interfere in the instant case and quash the proceedings as prayed by learned counsel for the applicant merely on the ground the learned Magistrate has failed to examine the final outcome of the F.I.R., which was disclosed by the opposite party no.2 in his complaint. Since, the opposite party no.2 has categorically disclosed the same, the

aforesaid complaint cannot be quashed merely on some technical fault on the part of the Magistrate while taking the cognizance in the matter and summoning the applicants herein.

18. Therefore, considering the totality of the circumstances of this case, this Court does not find any good reason to interfere with the instant application and the same is accordingly ***dismissed***.

19. Since, the proceedings of the instant case could not be proceeded due to the interim orders passed by this Court more than six years have been passed, therefore, the trial court is directed to proceed in the matter expeditiously.

Order Date :- 24.7.2024

Shubham Arya

(Anish Kumar Gupta, J.)