

Court No. - 80

Case :- APPLICATION U/S 482 No. - 23835 of 2023

Applicant :- Sukhiya Devi And 2 Others

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

Counsel for Applicant :- Uday Narain Singh

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. List revised.

2. Heard Shri Uday Narain Singh, learned counsel for the applicants, Sri Ajay Singh, learned A.G.A-I for the State and perused the material brought on record.

3. The present application under Section 482 Cr.P.C. has been filed by the applicants-Sukhiya Devi, Kabutara Devi and Chinta Devi with the prayer to quash the charge-sheet dated 11.09.2021 in Criminal Case No. 199 of 2022 arising out of Case Crime No.46 of 2021 (State Vs. Pradhan Smt. Ansui Devi and others), u/s 143, 147, 186, 188, 189, 341, 353, 269, 270, 504, 506, 34, 120-B IPC and Section 7 of CrI. Law Amendment Act and Section 54 of Disaster Management Act, 2005 and Section 3 Epidemic Diseases Act, 1897, Police Station Dheena, District Chandauli pending in the court of C.J.M. Chandauli and also to quash the cognizance order dated 22.01.2022 passed by C.J.M. Chandauli in the aforesaid case and further with the prayer to stay the further proceeding of aforesaid case during the pendency of the present application before this Hon'ble Court.

4. The facts of the case are that a FIR was lodged on 27.6.2021 under Sections 143, 147, 186, 188, 189, 341, 353, 269, 270, 504, 506, 34 IPC, 7 CrI. Law (Amendment) Act, 1932, Section 54 of Disaster Management Act, 2005 and Section 3 Epidemic Diseases Act, 1897 by Madhu Sudan Rai at Police Station Dheena, District Chandauli against applicants no.1 Sukhiya Devi, applicant no.2 Kabutara Devi and 49 other named persons with the allegation that on 25.6.2021 in village Gram Sabha Mahuji, Police Station Dheena, District Chandauli, the former Village Pradhan Uma Shankar Singh went to see the sitting Village Pradhan Smt. Ansuiya Devi who was admitted in the hospital for treatment and gave her clothes and articles. On 26.6.2021 when Smt. Ansuiya Devi came to her house, a murmur arose that the articles and clothes were infested with black magic which was spread by the former M.L.A Manoj Singh Dabloo and his supporters who then with his supporters and 200-250 persons on a suspicion of black magic collected on the public road and obstructed the traffic therein. The police and Government officials requested them to move away but they

resorted to abuses and threatened them which caused hindrance in public. The FIR was thus lodged. The charge sheet was submitted against 71 accused persons including the applicants on which the court concerned vide its order dated 22.1.2022 took cognizance and summoned the applicants and other accused persons for offences under Sections 143, 147, 186, 188, 189, 341, 353, 269, 270, 504, 506, 120-B IPC, 7 CrL. Law (Amendment) Act, 1932, Section 54 of Disaster Management Act, 2005 and Section 3 Epidemic Diseases Act, 1897.

5. Learned counsel for the applicant argued that charge sheet in the matter has been submitted ignoring the mandatory provision of Section 195(1) Cr.P.C. which creates bar to prosecute the applicants and other persons and to take cognizance except on a complaint in writing by a public servant. It is further submitted that with regards to offences under Section 54 of Disaster Management Act, 2005 and Section 60 of the said Act, no court shall take cognizance of a criminal case except on a written complaint. It is further submitted that for Section 7 CrL. Law (Amendment) Act a report has to be lodged by the S.H.O concerned and Section 7 (2) bars cognizance except on a report in writing of facts which constitute such offence made by police officer not below the rank below of in-charge of a police station. It is submitted that in the present case a FIR has been lodged by Sub-Inspector Madhu Sudan Rai who was the In-charge of outpost Mahuji, Police Station Dheena, District Chandauli and not by the S.H.O concerned. Learned counsel for the applicants has placed before the Court a judgement of a coordinate Bench of Lucknow Bench of this Court passed on 17.6.2022 in the case of **Ashutosh Verma Vs. State of U.P. and another in Application U/S 482 No. 3194 of 2022** in which the Hon'ble Court after considering the same arguments has quashed the prosecution against the applicant therein. The said order reads as under:-

"1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material on record.

2. The present application under Section 482 Cr.P.C. has been filed by the applicant to quash the entire proceeding of initiated against the petitioner on the basis of the CrL. Case No.3897 of 2022 arising out from Case Crime No.50 of 2022 (State Vs. Ashutosh Verma & Others) under Sections 188, 269, 270 I.P.C., Section 51 of Disaster Management Act, 2005 & Section 3 of Epidemic Act, 1897 related to P.S.- Kotwali Sadar, District-Kheri along with the summoning order dated 11.04.2022 passed by the Learned Court of Chief Judicial Magistrate, Kheri.

3. In brief facts of the case are that Sub-Inspector Sunil Kumar Singh of Police Station- Kotwali Sadar, District-Lakhimpur Kheri moved a Tehrir that when at about 04:38 P.M. of 15.01.2022, he was performing his duty on Bada Chauraha maintaining the law and order, applicant Ashutosh Verma, B.J.P. activist along with 25-30 persons went from the front of Sadar Kotwali towards Hira Lal without following the Covid-19

guidelines and in violation of Ideal Code of Conduct as procession. The applicant has not taken any approval regarding his procession and when police personnel tried to stop him, he did not stop and proceeded his procession. Thus, they violated the provisions of Section 144 of Cr.P.C. and Ideal Code of Conduct. Therefore, F.I.R. was lodged under Section 188, 269 and 270 I.P.C.

4. On the basis of Tehrir, instead of Sections 188, 269 and 270 I.P.C., F.I.R. was also lodged under Section 51 of Disaster Management Act, 2005 & Section 3 of Epidemic Act, 1897. After investigation, charge-sheet was submitted under the aforesaid sections by the I.O. upon which cognizance was taken on 11.04.2022 and accused persons were summoned. Being aggrieved with the aforesaid, applicant has filed the instant application under Section 482 Cr.P.C.

5. Learned counsel for the applicant submits that the I.O. has submitted the charge-sheet ignoring the mandatory provisions of Cr.P.C.. According to the petitioner, Section 195 (1) Cr.P.C. is a bar to prosecute the applicant and other persons and to take cognizance except on complaint in writing by the public servant.

6. In this regard, learned counsel for the applicant has placed reliance upon the judgment rendered by Hon'ble the Supreme Court in the case of Durgacharan Naik and others Vs. State of Orissa reported in AIR (1966) 1775 in which the Hon'ble Supreme Court had held as under:-

"We have expressed the view that S. 195 Cr.P.C. does not bar the trial of an accused person for a distinct offence disclosed by the same or slightly different set of facts and which is not included within the ambit of the section, but we must point out that the provisions of S. 195 cannot be evaded by resorting to devices or camouflage. For instance, the provisions of the section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, on the ground that the latter offence is a minor one of the same character, or by describing the offence as one punishable under some other section of the I.P.C., though in truth and substance the offence falls in the category of sections mentioned in S.195, Cr.P.C. Merely by changing the garb or label of an offence which is essentially an offence covered by the provisions of S.195 prosecution for such an offence cannot be taken cognizance of by mis-describing it or by putting a wrong label on it. On behalf of the appellants Mr. Garg suggested that the prosecution of the appellants under S.353 I.P.C. was by way of evasion of the requirements of S.195, Cr.P.C. But we substance in are satisfied that there is no this argument and there is no camouflage or evasion in the present case."

7. The aforesaid judgment was followed by the Hon'ble Supreme Court in the case of C. Muniappan and another Vs. Stated of Tamilnadu reported in 2010(9) SCC 567, wherein the Hon'ble Supreme held in para nos.35 and 36 as under:-

"35. Undoubtedly, the law does not permit taking cognizance of any offence under Section 188 IPC, unless there is a complaint in writing by the competent public servant. In the instant case, no such complaint had ever been filed. In such an eventuality and taking into account the settled legal principles in this regard, we are of the view that it was not permissible for the trial court to frame a charge under Section 188 IPC.

However, we do not agree with the further submission that absence of a complaint under Section 195 CrPC falsifies the genesis of the prosecution case and is fatal to the entire prosecution case.

36. There is ample evidence on record to show that there was a prohibitory order which had been issued by the competent officer one day before it had been given due 9 publicity and had been brought to the notice of the public at large; it has been violated as there is no denial even by the accused persons that there was no "Rasta Roko Andolan". Unfortunately, the agitation which initially started peacefully turned ugly and violent when the public transport vehicles were subjected to attach and damage. In such an eventuality, we hold that in case the charges under Section 188 IPC are quashed, it would by no means have any bearing on the case of the prosecution, so far as the charges for other offences are concerned."

8. The I.O. has also submitted the charge-sheet under Section 51 of Disaster Management Act, 2005 and Section 60 of the aforesaid Act says that no Court shall take cognizance of a criminal case except on a written complaint. According to the petitioner, in similar cases proceeding of criminal cases has been quashed by Hon'ble the Supreme Court and High Courts.

9. Learned counsel for the applicant has further placed the reliance upon the judgment rendered by this Court in the case of Smt. Saroj Mishra Vs. State of U.P. and Another decided on 09.09.2019. In the aforesaid case, F.I.R. was lodged under Sections 419, 420, 468, 471, 171 and 181 I.P.C.. The Court dealt with Section 195 Cr.P.C. of which sub-section (a) (i) (ii) says that no Court shall take cognizance of any offence punishable under Sections 172 to 188 I.P.C., of any abetment of, attempt to commit, such offence or, of any criminal conspiracy to commit, such offence, except on the complaint in writing of the public servant concerned.....

10. Section 195 (1) (a)(ia) of Cr.P.C. bars the Court from taking cognizance of any offence punishable under Section 188 I.P.C. or abetment, or attempt to commit the same unless there is a written complaint filed by the public servant concerned.

11. Learned counsel for the applicant has further placed the reliance upon the judgment rendered by High Court of Judicature at Bombay in the case of Hla Shwe and others Vs. State of Maharashtra, reported in Cr. Appeal-453-20j decided on 21.09.2020. It was a case under Section 14 of the Foreigners Act, Section 51 of Disaster Management Act, 2005 & Section 3 of Epidemic Act, 1897. In the aforesaid judgment, Bombay High Court considered the ambit and scope of Section 195(1) of Cr.P.C. and came to the conclusion that I.O. acted without jurisdiction in registering the F.I.R. under Section 188 I.P.C. and held that investigation conducted by the Police was without jurisdiction and subsequently, allowed the petition filed under Section 482 Cr.P.C and charge-sheet submitted by the I.O. under Sections 188, 269, 270 I.P.C., Section 14 of the Foreigners Act, Section 51 of Disaster Management Act, 2005 & Section 3 of Epidemic Act, 1897 was quashed being treated as the same as abuse of process of law.

12. Learned counsel for the applicant has further placed the reliance upon the judgment rendered by the Punjab and Haryana High Court in

the case of Pawan Giri and Others Vs. State of Haryana decided on 07.02.2022. In the aforesaid case, the F.I.R. was registered under Section 188 and 279 I.P.C.. The Punjab and Haryana High Court discussed the Section 188 and 279 I.P.C. and observed that restriction of Section 195 Cr.P.C. bars the proceeding. It was also observed that there was no iota of evidence on the record that the petitioners and their family members were suffering from any infectious disease or would have caused the spread of any infectious disease. In the absence thereof, it cannot be assumed that the petitioners were either carrier of infection or would have cause spread thereof.

13. Similarly, in the instant case there is no evidence on record which shows that any person of the said gathering were suffering from any infectious disease or any other person got the infectious disease after coming into the contact of either member of the said gathering.

14. Punjab and Haryana High Court has held that merely on the basis of a charge-sheet submitted under Section 188 I.P.C., applicant/petitioner cannot be prosecuted and learned High Court quashed the proceeding.

15. Lastly, learned counsel for the applicant has placed the reliance upon the judgment rendered by Hon'ble the Supreme Court in the case of Narendra Kumar Srivastava Vs. The State of Bihar and Ors., in Criminal Appeal No.211 of 2019, reported in MANU/SC/0135/2019 decided on 04.02.2019 in which the Hon'ble Supreme Court has held that Magistrate erred in taking the cognizance of the offence on the basis of a private complaint if the same is hit and covered by Section 195 (1) and 1(b) I.P.C.

16. This Court is of the opinion that for a case under Section 188 I.P.C. only complaint under Section 195 (1)(a) Cr.P.C. can be filed against the alleged accused persons. In this case, I.O. has investigated the case and has submitted that charge-sheet and the Magistrate concerned has taken cognizance which is not permissible under the eyes of law.

17. With the aforesaid observation, this Court is of the opinion that the instant application filed under Section 482 Cr.P.C. is liable to be allowed and the charge-sheet filed by I.O. is liable to be quashed.

18. Accordingly, entire proceeding initiated against the petitioner on the basis of the Crl. Case No.3897 of 2022 arising out from Case Crime No.50 of 2022 (State Vs. Ashutosh Verma & Others) under Sections 188, 269, 270 I.P.C., Section 51 of Disaster Management Act, 2005 & Section 3 of Epidemic Act, 1897 related to P.S.- Kotwali Sadar, District-Kheri along with the summoning order dated 11.04.2022 passed by the Learned Court of Chief Judicial Magistrate, Kheri is hereby quashed and the application filed under Section 482 Cr.P.C. stands allowed."

6. Per contra, learned counsel for the State vehemently opposed the prayer for quashing.

7. After having heard learned counsel for the parties and perusing the records, it is evident that the present case is squarely covered by the judgement passed in the case of Ashutosh Verma (Supra). The legal position in the present case also stands identical to that of the case of Ashutosh Verma

(Supra). Looking to same the charge-sheet as well as cognizance order passed in the aforesaid case are hereby quashed so far as it relates to the applicants only.

8. The present application under Section 482 Cr.P.C. stands **allowed**.

(Samit Gopal, J.)

Order Date :- 15.10.2024

Gaurav Kuls