

Court No. - 77

Case :- APPLICATION U/S 482 No. - 14602 of 2024

Applicant :- Dharmendra Kumar Verma

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

Counsel for Applicant :- Manoj Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Samit Gopal,J.

1. Heard Shri Manoj Kumar Pandey, learned counsel for the applicant, Sri Birendra Pratap Singh, learned counsel for the State and perused the material brought on record.

2. The present application under Section 482 Cr.P.C. has been filed by the applicant-Dharmendra Kumar Verma with the prayers to allow this application and quash the order dated 5.12.2022 (charge framed) passed by Chief Metropolitan Magistrate, Kanpur Nagar passed in Case No. 27948 of 2016 (State Vs. Dharmendra Kumar Verma) arising out of case crime no. 1033 of 2015, u/s 447, 379, 420, 467, 468, 471, 427, 506 IPC, P.S. Chakeri, District Kanpur Nagar.

3. The facts of the case are that FIR was lodged on 26.9.2015 by Ram Autar Verma, the opposite party no.2 against the applicant Dharmendra Kumar Verma for offences under Sections 447, 379, 427, 506 IPC. The details of the allegations are not being mentioned herein since the same would have no relevance at this stage. The matter was investigated after which charge sheet dated 24.5.2016 was submitted against the applicants under Sections 447, 379, 427, 506, 420, 467, 468, 471 IPC being charge sheet no. 239 of 2016. The court concerned took cognizance upon the said charge sheet vide order dated 26.5.2016. Against the charge sheet dated 4.5.2016, cognizance order dated 26.5.2016 and the proceedings against the applicant, he preferred Criminal Misc. Application U/S 482 No. 28825 of 2018 (Dharmendra Kumar Verma Vs. State of U.P. and another) which was dismissed vide order dated 3.3.2020 passed by another Bench of this Court. The said order reads as under:-

"Heard Sri Uday Bhan, learned counsel for the applicant, Sri Ghanshyam Dwivedi, counsel for opposite party no.2 and learned A.G.A. for the State.

This application under Section 482 Cr.P.C. has been filed for quashing the entire proceedings of Criminal Case No.27948 of 2016 (State of U.P. Vs. Dharmendra Kumar Verma) arising out on the basis of charge-sheet dated 4.5.2016 and cognizance order dated 26.5.2016 in Case Crime No.1033 of 2015, under Sections 447, 379, 427, 506, 420, 467, 468, 471 I.P.C., P.S. Chakeri, District Kanpur Nagar which is pending before the court of Metropolitan Magistrate, Kanpur Nagar.

Learned counsel for applicant contends that applicant has been falsely

implicated in the F.I.R. lodged by his father under influence of his elder brother Mukesh; that the real fact is that family settlement of property of mother of applicant did take place between applicant, his brother and his parents vide settlement deed dated 17.7.2010; that on the basis of above settlement deed the applicant filed Civil Suit No.2491 of 2010 against his parents and brother and obtained a declaratory decree in his favour from the court of Civil Judge (Senior Division), Kanpur Nagar on 1.2.2012, copy at Annexure-6; that dispute is of civil nature and under influence of elder brother of applicant, the opposite party no.2 has given criminal colour to the civil dispute for causing harm and harassment to applicant; that entire story mentioned in F.I.R. is false and incorrect; that applicant has not committed any offence and the I.O. has submitted charge-sheet against applicant without proper investigation and the Court has taken cognizance without due application of mind; that no offence is made out against applicant and the prosecution of applicant in this matter is nothing but abuse of process of Court and so the proceedings of criminal case as well as charge-sheet and cognizance order are liable to be quashed.

Per contra, learned A.G.A. for the State and learned counsel for opposite party no.2 vehemently opposed the prayer for quashing of proceedings and supporting the charge-sheet and cognizance order contended that applicant has not come with clean hands and has concealed the fact that after passing of cognizance order dated 26.5.2016 he moved application for discharge before C.M.M., Kanpur Nagar which was rejected vide order dated 4.7.2018, copy at page 57 of counter affidavit under Annexure C.A.-6; that family settlement deed dated 17.7.2010 allegedly prepared by Ram Prakash Sachan, Advocate has been forged by applicant to deceive his parents and brother and usurp their property; that no deed of family settlement was executed by opposite party no.2, his wife or his elder son on 17.7.2010 or on any other date and Ram Prakash Sachan, Advocate has given his affidavit denying the preparation of any such deed at page 46 of counter affidavit; that disciplinary committee of Bar Council of Uttar Pradesh vide order dated 26.8.2016 suspended the registration of applicant and debarred him from legal practice for a period of 5 years, copy at Annexure C.A.-2; that applicant may not claim any right or interest in the property of his parents or mother during her life time; that applicant is mischievous type of person and is causing abuse of process of Court by moving this application under Section 482 Cr.P.C.

In reply, learned counsel for applicant further contended that there is no F.S.L. report in regard with the alleged forgery in family settlement deed; that opposite party no.2 moved an application seeking maintenance from applicant which was rejected twice by the Court; that opposite party no.2 claims to have severed his connections with applicant by publication in news paper on 13.7.2008 (C.A.-5) which is without any ground so may not be admissible.

From the perusal of the material on record and looking into the facts of the case at this stage it cannot be said that no offence is made out against the applicant. All the submissions made at the bar relate to the disputed questions of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C. At this stage only prima facie case is to be seen in the light of the law laid down by Supreme Court in 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 and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283.

Upon hearing parties' counsel and perusal of record, I find that the allegations regarding fabrication of family settlement deed and its examination by Finger Print and Hand Writing Expert is to be done in court proceedings and to be decided by Court upon evidence.

In view of discussions made above, I have come to the conclusion that learned counsel for the applicant has failed to show that there is any abuse of process of court or likelihood of miscarriage of justice for prevention of which the exercise of inherent powers by this Court is required. The application is devoid of merits and is liable to be dismissed.

The application u/s 482 Cr.P.C. is dismissed accordingly. "

4. The Chief Metropolitan Magistrate, Kanpur Nagar subsequently framed charges against the applicant vide order dated 5.12.2022 for offences under Sections 447, 379, 420, 467, 468, 471, 427 and 506 IPC. The trial in the matter started in which five prosecution witnesses namely Ram Autar Verma/P.W.1, Ram Sakhi Verma/P.W.2, Mukesh Kumar Verma/P.W.3, Anil Sharma/P.W.4 and Rakesh Kumar Gupta/P.W.5 have been examined. The said statements are annexed as Annexure No.7 to 10 of the affidavit. The Applicant then filed an application under Section 482 Cr.P.C. before this Court being Criminal Misc. Application No. 14189 of 2023 (Dharmendra Kumar Verma Vs. State of U.P. and another) which was got dismissed as withdrawn on the ground of filing of fresh petition with better particulars and pleadings which was allowed by coordinate Bench of this Court vide order dated 15.5.2023, the said order reads as under:-

"1. After arguing the matter at some length, counsel for the applicant prays for withdrawal of the present application with liberty to file afresh with better particulars and pleadings.

2. Learned A.G.A. has no objection.

3. Accordingly, the instant application is dismissed as withdrawn with liberty as prayed.

4. Let certified copy of the documents be returned to counsel for the applicant as per the Rules of the Court."

5. The present application has thus been filed with the aforesaid prayer.

6. Learned counsel for the applicant argued that the applicant has been falsely implicated in the present case. It is argued that the falsity of the prosecution case would be evident from the fact that the applicant had filed a declaratory suit no.2491 of 2010 (Dharmendra Kumar Verma Vs. Ram Sakhi Verma and two others) before the Civil Court which was allowed ex-parte

vide judgement and order dated 1.2.2012 passed by Civil Judge (Senior Division), Kanpur Nagar and a declaration was issued that the applicant is the owner of the plot/house of 300 square yard situated as house no.225/3 Kalibadi Harjindarnagar, Kanpur Nagar and Gandhigram Harjinder Nagar. Looking to the same the proceedings against the applicant deserves to be quashed.

7. Per contra, learned counsel for the state opposed the prayer for quashing.

8. After having heard learned counsel for both the parties and perusing the records, it is evident that the stage in the present trial is that after framing of charge five prosecution witnesses have been examined. The challenge now is of the order dated 5.12.2022 by which charge has been framed against the applicant. The prayer for quashing of the proceedings, charge sheet dated 4.5.2016 and the order taking cognizance dated 26.5.2016 also stands refused by another Bench of this Court vide order dated 3.3.2020.

9. The Apex Court in the case of **Ratilal Bhanji Mithani Vs. State of Maharashtra and others : (1979) 2 SCC 179** has held that after framing of charge there cannot be a discharge but only an acquittal can be done on a finding of not guilty turning on the merits of the case. It has been held as follows :-

"24. At the outset, let us have a look at the relevant provisions of the Code of Criminal Procedure, 1898, which admittedly governed the pending proceedings in this case. The procedure for trial of warrant cases by Magistrates is given in Chapter XXI of that Code. The present case was instituted on a criminal complaint. Section 252 provides that in such a case, the Magistrate shall proceed to hear the complainant (if any) and take all such evidence, as may be produced, in support of the prosecution. Sub-section (2) of that Section casts a duty on the Magistrate to ascertain the names of persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and to summon all such persons for evidence. Section 253 indicates when and in what circumstances an accused may be discharged: It says:

"253. (1) If, upon taking all the evidence referred to in Section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be

recorded by such Magistrate, he considers the charge to be groundless."

Section 254 indicates when and in what circumstances a charge should be framed. It reads:

"254. If, when such evidence and examination have been taken and made, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try, and which, in his opinion could be adequately punished by him, he shall frame in writing a charge against the accused."

Section 255 enjoins that the charge shall then be read over and explained to the accused, and he shall be asked whether he is guilty or has any defence to make. If the accused pleads guilty, the Magistrate shall record that plea, and may convict him thereon.

25. Section 256 provides that if the accused refuses to plead or does not plead, or claims to be tried, he shall be required to state at the next hearing whether he wishes to cross-examine any of the witnesses for the prosecution whose evidence has been taken, and if he says he so wants to cross-examine, the witnesses named by him shall be recalled and he will be allowed to further cross-examine them. "The evidence of any remaining witnesses for the prosecution shall next be taken" and thereafter the accused shall be called upon to enter upon and produce his defence.

26. Section 257 is not material. Section 258(1) provides that if in any case in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal. Sub-section (2) requires, where in any case under this chapter the Magistrate does not proceed in accordance with the provisions of Section 349 or Section 562, he shall, if he finds the accused guilty, pass sentence on him in accordance with law.

27. From the scheme of the provisions noticed above it is clear that in a warrant case instituted otherwise than on a police report, "discharge" or "acquittal" of accused are distinct concepts applicable to different stages of the proceedings in Court. The legal effect and incidents of "discharge" and "acquittal" are also different. An order of discharge in a warrant case instituted on complaint, can be made only after the process has been issued and before the charge is framed. Section 253(1) shows that as a general rule there can be no order of discharge unless the evidence of all the prosecution witnesses has been taken and the Magistrate considers for reasons to be recorded, in

the light of the evidence, that no case has been made out. Sub-section (2) which authorises the Magistrate to discharge the accused at any previous stage of the case if he considers the charge to be groundless, is an exception to that rule. A discharge without considering the evidence taken is illegal. If a prima facie case is made out the Magistrate must proceed under Section 254 and frame charge against the accused. Section 254 shows that a charge can be framed if after taking evidence or at any previous stage, the Magistrate, thinks that there is ground for presuming that the accused has committed an offence triable as a warrant case.

28. Once a charge is framed, the Magistrate has no power under Section 227 or any other provision of the Code to cancel the charge, and reverse the proceedings to the stage of Section 253 and discharge the accused. The trial in a warrant case starts with the framing of charge; prior to it, the proceedings are only an inquiry. After the framing of the charge if the accused pleads not guilty, the Magistrate is required to proceed with the trial in the manner provided in Sections 254 to 258 to a logical end. Once a charge is framed in a warrant case, instituted either on complaint or a police report, the Magistrate has no power under the Code to discharge the accused, and thereafter, he can either acquit or convict the accused unless he decides to proceed under Section 349 and 562 of the Code of 1898 (which correspond to Sections 325 and 360 of the Code of 1973).

29. Excepting where the prosecution must fail for want of a fundamental defect, such as want of sanction, an order of acquittal must be based upon a "finding of not guilty" turning on the merits of the case and the appreciation of evidence at the conclusion of the trial.

30. If after framing charges the Magistrate whimsically, without appraising the evidence and without permitting the prosecution to produce all its evidence, "discharges" the accused, such an acquittal, without trial, even if clothed as "discharge", will be illegal. This is precisely what has happened in the instant case. Here, the Magistrate, by his order dated December 12, 1962, framed charges against Mithani and two others. Subsequently, when on the disposal of the revision applications by Gokhale, J., the records were received back he arbitrarily deleted those charges and discharged the accused, without examining the "remaining witnesses" of the prosecution which he had in the order of framing charges, said, "will be examined after the charge".

(emphasis supplied)

10. The situation is the same in the present matter. After taking cognizance on the charge sheet challenge to the same was

refused by another Bench of this Court. Subsequent to which charges were framed in which the accused-applicant not pleading guilty and claimed to be tried, the trial starting and five witnesses have been examined and now the applicant-accused comes up to challenge the order framing charge at such a belated stage. Looking to the facts and circumstances of the case and the dictum of the Apex Court in the case of Ratilal Bhanji Mithani (Supra), this Court is not inclined to interfere in the matter at such a belated stage for quashing of the charges. This Court does not find it a fit case for interference.

11. The present application under Section 482 Cr.P.C. is, thus, **dismissed.**

(Samit Gopal, J.)

Order Date :- 6.8.2024

Gaurav Kuls