

Court No. - 77

Case :- APPLICATION U/S 482 No. - 14915 of 2024

Applicant :- Jatan Kumar Singh

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Sr. Advocate, Vaibhav Shandilya

Counsel for Opposite Party :- Amarnath Tripathi, G.A., Rajesh Pratap Singh

Hon'ble Samit Gopal, J.

1. Heard Sri Vivek Shandilya, learned Senior Advocate assisted by Sri Vaibhav Shandilya, learned counsel for the applicant, Sri Rajesh Pratap Singh and Sri Amarnath Tripathi, learned counsels for the opposite party no.2 and Sri Triveni Saran Rai, learned counsel for the State and perused the records.

2. Office to trace out the vakalatnama on behalf of the opposite party no.2 and place it on record and make a note in the order sheet.

3. The present application under Section 482 Cr.P.C. has been filed by the applicant Jatan Kumar Singh with the following prayers:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to quash the order dated 09.04.2024, passed by the Chief Judicial Magistrate, Varanasi in Criminal Case No. 20759 of 2020, State Vs. Jatan Kumar Singh, Case Crime No. 533/2020, under Sections 465, 468, 471 I.P.C., P.S. Cantt. District Varanasi.

It is further prayed that this Hon'ble Court may be pleased to quash the charge-sheet dated 13.10.2020, submitted by the police against the applicant in Case Crime No. 533/2020, under Sections 465, 468, 471 I.P.C., P.S. Cantt. District Varanasi.

It is further prayed that this Hon'ble Court may be pleased to quash the further proceedings of Criminal Case No. 20759 of 2020, State Vs. Jatan Kumar Singh, Crime No. 533/2020, under Sections 465, 468, 471 I.P.C., P.S. Cantt. District Varanasi pending before the Chief Judicial Magistrate, Varanasi.

It is also prayed that this Hon'ble Court may be pleased to stay the

order dated 09.04.2024, passed by the Chief Judicial Magistrate, Varanasi in Criminal Case No. 20759 of 2020, State Vs. Jatan Kumar Singh, Case Crime No. 533/2020, under Sections 465, 468, 471 I.P.C., P.S. Cantt. District Varanasi, during the pendency of this application before this Hon'ble Court.

It is also prayed that this Hon'ble Court may be pleased to stay the further proceedings of Criminal Case No. 20759 of 2020, State Vs. Jatan Kumar Singh, Crime No. 533/2020, under Sections 465, 468, 471 I.P.C., P.S. Cantt. District Varanasi, pending before the Chief Judicial Magistrate, Varanasi, during the pendency of this application before this Hon'ble Court, and/or, pass such other and further order which this Hon'ble Court may deem fit and proper in the circumstances of the case."

4. The facts arising out of initiation of the present case are that a First Information Report was lodged under Sections 420, 465, 468, 471 IPC on 30.06.2020 by Om Prakash Singh the opposite party no.2 against Jatan Kumar Singh S/o Shri Gulab Singh, House No. 15/79, Aktha Tiraha, Sarnath Pahadiya, District Varanasi alleging therein that a First Information Report as Case Crime No. 22/2012 under Sections 279, 147, 323, 504, 506 IPC, P.S. Sarnath, District Varanasi is pending against him of which the trial is pending before the Court of ACJM, Court No.7, Varanasi as Criminal Case No. 4002 of 2012. The accused has got a shop for liquor allotted in his favour whereas at the time of allotment he has produced his Aadhar Card and Character Certificate showing his address as Akatha Tiraha, Sarnath Pahadiya on which he is also filing Income Tax Return and on the same address he has given his application and affidavit. He has concealed the criminal case pending against him at the address of Varanasi and on the basis of a forged affidavit got this character certificate prepared and filed which was got verified on 20.02.2018 in the Excise Department. In para 7 of the said affidavit he has stated that he has no criminal history and in para 8 also he has stated the same. In para 12 he has stated that he is not involved in criminal activities and if he is involved his license may be cancelled. Jatan Kumar Singh is having a criminal history and on the address of Varanasi he has got a forged character certificate issued and has filed the same and taken undue advantage. It is submitted that a report be lodged and action be taken.

5. The matter was investigated and a charge sheet dated 13.10.2020 was filed against the applicant for offences under Sections 465, 468, 471 IPC on which the court concerned took cognizance on 20.11.2020. The order taking

cognizance/summoning, the charge sheet dated 13.10.2020 and the proceedings were challenged before this Court in CrI. Misc. Application 482 No. 2962 of 2021 (Jatan Kumar Singh Vs. State of U.P. and another), the said 482 petition was disposed of by a co-ordinate Bench of this Court vide order dated 13.02.2024 without going into merits of the matter but on the ground that the order of cognizance is on a printed proforma and thus the same which is dated 20.11.2020 was set aside and the matter was remanded back for passing a fresh order in accordance with law. The said order reads as under:

"1. Heard Sri Manish Tiwari, learned Senior Counsel assisted by Sri Praveen Kumar Singh and Sayed Imran Ibrahim, learned counsel for the applicant, Sri Rajesh Pratap Singh, learned counsel for the opposite party no. 2 and Sri Shamsheer Bahadur Maurya, learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of proceeding of Criminal Case No. 20759 of 2020 (State vs. Jatan Kumar Singh) arising out of Case Crime No. 533 of 2020, under Sections 465, 468, 471 I.P.C., Police Station Cantt., District Varanasi as well as the charge sheet dated 13.10.2020 and its order of cognizance / summoning order dated 20.11.2020.

3. Learned Senior Counsel for the applicant submits that in the instant case the opposite party no. 2 herein is a business partner of the applicant herein and due to the strained relationship between the applicant and the opposite party no. 2, the instant F.I.R. has been lodged by the opposite party no. 2 without having any locus to challenge the character certificate issued in favour of the applicant herein. If any concealment is found in the affidavit as has been alleged in the instant F.I.R., it was only for the concerned department to initiate proceeding for filing the false affidavit.

4. Learned counsel for the applicant further submits that the case crime No. 22 of 2012 which is alleged as the criminal history of the applicant was result of a motor accident, therefore, there was absence of mens-rea in the said case. Therefore, in the strict sense, the said case was not a criminal case, which was required to be mentioned in the affidavit. Further learned counsel for the applicant submits that in the instant case, the cognizance has been taken by the learned Magistrate vide order dated 20.11.2020 on a printed format which practice has been deprecated by this Court in various judgements. In view thereof, learned Senior Counsel submits that the said cognizance order is illegal and is liable to be quashed.

5. Learned counsel for the applicant further submits that even if the entire narration in the F.I.R. is taken as true, no offence under Sections 465, 468 and 471 I.P.C. is made out against the applicant as all those offences are relating to the forgery and there is no allegation with regard to the forgery of any document. The allegation is only that in an affidavit filed by the applicant, he has made a false statement, therefore, no offence under Sections 465, 468 and 471 I.P.C. shall be attracted against the applicant.

6. *Per contra*, learned counsel for the opposite party no. 2 submits that it was a deliberate concealment and mala-fide design on the part of the applicant whereby, the applicant has obtained the character certificate by giving a wrong address and by concealing his criminal history. So far as the other arguments made by learned Senior Counsel with regard to the cognizance on a printed format, learned counsel for the opposite party no. 2 admits that it is on a printed format, which cannot be sustained. So far as the offence under Section 420 is concerned, it is submitted that the opposite party no. 2 is not the right person to complaint about it, therefore, prosecution under Section 420 I.P.C. at the behest of opposite party no. 2 is not sustainable.

7. Learned counsel for the State submits that since in an affidavit, the applicant has made false statement and signed it therefore, he has created a false documents which is very well covered under the provisions of Section 463, 468 and 471 I.P.C.

8. In the instant case, this court finds that cognizance order has been passed on a printed format. Therefore, without going into the merits of the case, since passing of the order on a printed format is a practice which has been deprecated by this Court in various judgements, thus, the cognizance order dated 20.11.2022 is set aside and the matter is remitted back to the concerned Magistrate to pass a fresh order of taking cognizance order in accordance with law, without being influenced by any of the observations made in this order.

9. With the aforesaid observation, the present application is disposed of."

6. The Court concerned in compliance of the order dated 13.02.2024 took up the matter and then considering the case diary and the other documents took cognizance upon the same vide order dated 09.04.2024 passed by the Chief Judicial Magistrate, Varanasi. The applicant has been summoned to face trial under Sections 465, 468, 471 IPC. The present petition has thus been filed before this Court with the prayers as aforesaid.

7. Learned counsel for the applicant submitted as follows:

(i) The first informant/opposite party no.2 has no locus to file the present FIR inasmuch as he is not one of the persons permitted to initiated the criminal proceedings as per Section 39 of the Code of Criminal Procedure, 1973, (paragraph 18 of the affidavit has been placed before the Court).

(ii) There is no criminal case is pending against the applicant inasmuch as the applicant was released on bail in Case Crime No. 22 of 2012, P.S. Sarnath, District Varanasi and was subsequently acquitted vide judgment and order dated 08.07.2020 passed by the Additional Chief Judicial Magistrate, Court No.6, Varanasi, (paragraph 3 of the affidavit has been placed before the Court).

(iii) The Chief Judicial Magistrate, Varanasi while passing the order dated 09.04.2024 has not recorded any *prima-facie* satisfaction for taking cognizance and summoning the applicant and as such the order is in a cryptic manner, (paragraphs 19 and 20 of the affidavit have been placed before the Court.). (The judgment of the Apex Court in the case of **Ravindranatha Bajpe Vs. Mangalore Special Economic Zone Ltd. and others Etc. : Crl. Appeal No. 1047-1048 of 2021, decided on 27.09.2021**, paragraphs 6, 6.1 and 9 have been placed before the Court and judgment of a co-ordinate Bench of this Court in Crl. Misc. Application 482 No. 2083 of 2023 (Satya Pal Vs. State of U.P. and another), decided on 01.03.2023, (paragraph no.2 at page 7 and paragraph 2 at page 8 have been placed before the Court).

(iv) The affidavit as given by the applicant which is dated 26.02.2018 for obtaining license from the Excise Department was a proforma of affidavit which was in a printed form and without reading the same the applicant made his signature in hurry, (paragraph 25 of the affidavit has been placed before the Court).

(v) It is submitted that as such the proceedings against the applicant be quashed.

8. Per contra, learned counsel for the first informant and learned counsel for the State opposed the prayer for quashing and arguments of learned counsel for the applicant. It is submitted as follows:

(i) The locus of a complainant is irrelevant as per settled principles of law.

(ii) The order taking cognizance and summoning the applicant is a speaking order with application of mind which shows the satisfaction of the court concerned.

(iii) The applicant concealed important and relevant fact regarding pendency of a criminal case against him and on a different address gave an affidavit that no criminal case is pending against him and obtained a license for liquor shop from the Excise Department.

(iv) The present petition has no substance and deserves to be dismissed.

9. After having heard learned counsel for the parties and perusing the records, it is evident that First Information Report has been lodged by the opposite party no.2 alleging disclosure of a false fact

in an affidavit by the accused applicant for seeking liquor license from the Excise Department inasmuch as there was a criminal case pending against him but he declared that there was no criminal case against him and also filed a character certificate against the actual facts.

10. In so far as the challenge to locus of the informant/complainant is concerned, it is trite law that the locus of a complainant is irrelevant and any person can file a complaint irrespective of his motive or prejudice as has been held by the Apex Court in the case of **Sheo Nandan Paswan Vs. State of Bihar and others : (1987) 1 SCC 288**. It is held that a criminal proceeding is not a proceeding for vindication of a private grievance but it is a proceeding initiated for the purpose of punishment to the offender in the interest of the society. It is for maintaining stability and orderliness in the society that certain acts are constituted as offences and the right is given to any citizen to set the machinery of the criminal law in motion for the purpose of bringing the offender to book. It is further held that locus standi of the complainant is a concept foreign to criminal jurisprudence. Any citizen can lodge a first information report or file a complaint and set the machinery of the criminal law in motion and his locus standi to do so cannot be questioned. Thus the opposite party no.2 has locus to initiate the present proceedings.

11. Section 39 Cr.P.C. creates a statutory obligation upon a citizen to inform the Police regarding certain offences mentioned in the said section. However, it does not mean that in any manner it bars a person from informing the Police about occurrence of any incident seen by him. Merely because a person is not under statutory obligation to report and inform about the incident, it cannot be said that his locus to inform Police about cognizance offence gets wiped out.

12. In so far as the next argument regarding the question of satisfaction of the court concerned while passing an order taking cognizance and summoning the accused is concerned, the Apex Court in the case of **Deputy Chief Controller of Imports & Exports v. Roshanlal Agarwal : (2003) 4 SCC 139** has held that a Magistrate is not required to record reasons at the stage of issuing the process to the accused. Para 9 of the said judgment reads as under:

"9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction.

Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. This question was considered recently in U.P. Pollution Control Board v. Mohan Meakins Ltd. [(2000) 3 SCC 745 : AIR 2000 SC 1456] and after noticing the law laid down in Kanti Bhadra Shah v. State of W.B. [(2000) 1 SCC 722 : 2000 SCC (Cri) 303 : AIR 2000 SC 522] it was held as follows: (SCC p. 749, para 6)

"The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order." "

13. Thus the law on the point of recording of satisfaction of the Magistrate is concerned while taking cognizance and summoning is concerned, is also clear and trite that a detailed order at the stage of issuing of process to the accused is not required and there is no requirement to record reasons for the same. Moreso in the present case, the reading of the order impugned dated 09.04.2024 passed by the CJM, Varanasi goes to show that the same has been passed after considering the entire material available before the Court and recording a satisfaction that there is sufficient material to take cognizance and summoned the applicant under the said sections, the said argument also thus does not stand to any merit. The next argument as has been pleaded in paragraph 25 of the affidavit that the applicant had signed at printed proforma in a hurry, cannot be a defence legally sustainable in favour of the accused.

14. In so far as the acquittal of the applicant in this criminal case pending against him is concerned, at the time of furnishing of the said affidavit that is on 26.02.2019 there was a criminal case pending against him. On his own showing in paragraph 3 of the affidavit he was acquitted in the said case on 08.07.2020, the same thus shows that his acquittal was at a later point of time from the filing and furnishing of the said affidavit.

15. In view of the above discussions, facts of the case and the legal position, no ground for interference is made out, the present 482 petition is thus devoid of any merit and deserves to be dismissed.

16. The petition is thus **dismissed**.

Order Date :- 2.8.2024

M. ARIF

(Samit Gopal, J.)