

Court No. - 75

Case :- APPLICATION U/S 482 No. - 22555 of 2024

Applicant :- Anil Kumar Yadav

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

Counsel for Applicant :- Ratnakar Upadhyay, Sr. Advocate

Counsel for Opposite Party :- A.K. Mishra, G.A., Sati Shanker Tripathi

Hon'ble Mrs. Manju Rani Chauhan, J.

1. Heard Mr. R.K. Ojha, senior counsel assisted by Mr. Ratnakar Upadhyay, learned counsel for the applicant, Mr. A.K. Mishra, learned counsel for opposite party no.2 as well as Mr. Mayank Awasthi, learned counsel for the State.

2. The present application has been filed with the following prayer :-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow this application and quash the Charge Sheet dated 10.04.2024 in Case Crime No.0088 of 2022 under Sections 420, 467, 468, 471 I.P.C., Police Station Balaini, District Bagpat as well as cognizance order dated 16.05.2024 passed by Additional Civil Judge (S.D.), Baghpat. It is further prayed that this Hon'ble Court may be pleased to stay the entire proceeding arising out of Charge Sheet dated 10.04.2024 in Case Crime No.0088 of 2022 under Sections 420, 467, 468, 471 I.P.C., Police Station Balaini, District Bagpat as well as cognizance order dated 16.05.2024 passed by Additional Civil Judge (S.D.), Baghpat, and/or pass such order and further order as this Hon'ble Court may deem fit and proper."

3. Placing the brief facts, learned counsel for the applicant submits that Anil Kumar Yadav - applicant is Manager of Committee of Management of Sri Krishna Inter College Balaini, Baghpat (earlier District- Meerut). The aforesaid inter college is situated in remote area and at that time there was no educational institution for higher education, therefore, Committee of Management pass a resolution to establish Degree College in the aforesaid remote area. For the purpose of establishment of Degree College land was required, therefore, the then Committee of Management proposed to pass a resolution for transferring 16 bighas, 11 biswa and 4 biswansi land in favour of Sri Krishan Degree College out of 40 bighas of land belonging to the inter college. For transferring the land from one institution to another, permission is required under the relevant act thus; an application for seeking permission for transferring the

land was placed before the Deputy Director Regional Education, Meerut Region Meerut (hereinafter referred as "DDRE, Meerut") in the year 1992 by the then Committee of Management. On the aforesaid application, the DDRE, Meerut sort guidelines from Director of Education, Prayagraj through a letter dated 03.10.1992. The Director of Education, Prayagraj in turn by letter dated 04.12.1992 informed that action has to be taken on the regional level. Hence, DDRE, Meerut issued letter dated 04.05.1993 to District Inspector of Schools (hereinafter referred as "DIOS") for making spot inspection of the land to be transferred. The DIOS after making spot inspection recommended for transfer of land to Degree College on 04.05.1993. Pursuant to the spot inspection and recommendation, the DDRE, Meerut passed an order dated 17.05.1993 granting permission to transfer the land in favour of the Degree College. The land was transferred and Degree College has been established.

4. After nearly three decades, the opposite party no.2 raised the illegal demand to the applicant as well as Committee of Management which when not fulfilled, he with malicious intention moved an application under Section 156(3) Cr.P.C. before the Chief Judicial Magistrate, Baghpat, who, without considering the law and facts applicable, directed the concerned police station to register the first information report, pursuant to which the first information report was lodged on 16.06.2022.

5. In another set of proceedings initiated under Section 16-D of U.P. Act No.3 of 1975 against the applicant as well as Committee of Management of the inter college, a detailed order for appointing Authorized Controller was passed by the State Government on 12/13.08.2021. The aforesaid order was challenged before this Hon'ble Court by filing Writ C No.26746 of 2021 (C/M Sri Krishna Inter College and Another vs. State of U.P. and 3 Others) and the Hon'ble Court vide order dated 24.01.2022 disposed of the petition with the following direction :-

"9. Accordingly, the present writ petition is disposed of with the following direction:

(i) In case, the petitioner files a copy of this order before respondent no.1 within a period of one week from today, the said respondent shall cause a proper, efficient and prompt enquiry to be conducted by all concerned to establish if the order dated 17.05.1993 had been passed by Dr. R.P. Dhyani, the then Deputy Director of Education-I, Meerut Region, Meerut. For that purpose, the petitioner may produce the original documents before the said respondent no.1 alongwith a copy of this order.

(ii) Besides calling the response from the said Dr. R.P. Dhyani, respondent no.1 shall also cause proper direct enquiry to be made from the office of

Director of Education, the DIOS Meerut, Manager/Principal Sri Krishna Inter College, Balaini, Baghpat and the District Magistrate, Meerut to whom that communication (order dated 17.05.1993) is disclosed to have been dispatched by Letter No. Ma-3/3976-75/93-94 as is mentioned on the face of the said order itself.

(iii) Such enquiry may be necessarily concluded within a period of three weeks from the date of production of a copy of this order. Any material that may emerge in that enquiry as may be adverse to the petitioner, may be confronted to him within a further period of one week therefrom and in that event the interim arrangement provided under the impugned order may continue upto 31 March, 2022.

(iv) Upon receiving the reply/response of the petitioner to such notice/adverse material, a final decision may be made in that regard within a period of two weeks therefrom after hearing all necessary parties.

(v) Needless to add, if no adverse material is found against the petitioner, the impugned order may not be extended except against specific order containing reasons for the same."

6. While disposing of the aforesaid petition, the Court had observed that simply because the order dated 17.05.1993 does not find place in the dak register, it cannot be said that the document is forged, therefore, an efficient and proper inquiry was to be conducted as per the observations made by the Court in the order dated 24.01.2022 which has been mentioned above.

7. Surprisingly, the State Government has again passed an order dated 08.09.2022 without considering the findings and observations made by the Hon'ble Court in its order dated 24.01.2022. Challenging the aforesaid order dated 08.09.2022, the applicant preferred Writ Petition No.32261 of 2022 (C/M Sri Krishna Inter College and Another vs. State of U.P. and 3 Others) and the Hon'ble Court by interim order dated 31.10.2022 was pleased to stay the operation and effect of the order dated 13.08.2021 passed by the Special Secretary (Secondary Education Anubhag - 9), Government of Uttar Pradesh as well as order dated 08.09.2022 passed by Principal Secretary (Secondary Education Anubhag - 9), Government of Uttar Pradesh.

8. A special appeal was filed by the State Government against the aforesaid order and the same has been dismissed by order dated 10.01.2023 passed in Special Appeal No.807 of 2022 (Jai Singh and Another vs. State of U.P. and 5 Others). It is relevant to mention that the first information report lodged by the respondent no.2 was challenged by means of criminal writ petition wherein an interim order was passed in favour of the applicant staying his arrest.

9. Learned counsel for the applicant submits that the FIR has been lodged after a delay without giving any plausible explanation for the same. The FIR has been lodged due to ulterior motive and enmity, with false & frivolous allegations regarding forging of order dated 17.05.1993 issued by Deputy Director Regional Education, Meerut Region Meerut granting permission for transfer of land for purposes of running Degree College. He further submits that simply because the aforesaid letter does not find mention in the dispatch register, the same cannot be said to be a forged one as has been observed by Court in various orders passed in favour of the applicant.

10. No forgery has been committed by the applicant as after the order dated 17.05.1993, DDRE, Meerut has passed an order dated 01.07.1996 permitting five class rooms of inter college on a temporary basis to be run by the Degree College. The aforesaid fact also has no legs to stand as the District Inspector of Schools after the order dated 17.05.1993 and 01.07.1996, has passed an order dated 26.08.1996 mentioning about both the orders, thus, proving the order dated 17.05.1993 genuine.

11. Despite direction and observations made by this Court, conducting a detailed, prompt and efficient inquiry with respect to order dated 17.05.1993 and order dated 08.09.2022 has been passed without considering the aforesaid, hence the same is not justified and has been challenged before this Court on several grounds and the Hon'ble Court has been kind enough to stay the operation and effect of the aforesaid order. The Investigating Officer while submitting the charge sheet has not conducted the investigation in a fair and proper manner as at the relevant point of time, Mr. R.P. Dhyani, who was posted as Deputy Director of Education, Meerut Region Meerut has not been examined, nor his statement has been recorded to find out whether the letter dated 17.05.1993 is authentic or not. The letter dated 17.05.1993 has been sent to the Director of Education, Allahabad (Prayagraj), District Inspector of Schools, Meerut, District Magistrate-Meerut and now the aforesaid persons have been examined by the Investigating Officer to prove the genuineness of the same. None of the persons from the office of DDRE, Meerut have been examined by the Investigating Officer. Thus, the entire proceedings based on such defective investigation are vitiated.

12. Even otherwise, specific act has been provided for any such act being done by Committee of Management and punishment has also been prescribed, thus, dual proceedings cannot be initiated against the applicant i.e. one on the basis of the specific act and the

other on the basis of the FIR lodged as the same is against the principles of double jeopardy.

13. Learned counsel for the applicant placing reliance upon the judgment of Apex Court passed in the case of **Prem Raj vs. Poonamma Menon & Another** reported in (2024) 6 SCC 143 has held that once a Civil Court has given a finding, the same has a binding effect on the Criminal Court. In the present case, when once the Court while considering the case of the applicant wherein Authorized Controller was appointed by the State Government by order dated 13.08.2021 was under challenge, has observed that simply because the alleged document does not find place in the dispatch register, it cannot be said to be forged. Thus, the aforesaid was binding upon the Criminal Court which should have been taken into consideration prior to summoning of the applicant.

14. At the very outset learned AGA for the State as well as learned counsel for the opposite party no.2 submit that the applicant/accused has not challenged the summoning order and in absence of the same, the proceedings cannot be challenged by the accused in view of the judgment passed by this Court in the case of **Simplex Infrastructures and 4 Others vs. State of U.P. and Another in Criminal Misc. Application No.14785 of 2015 decided on 27.11.2018** reported in 2018 ADJOnline 0755.

15. Disputed question of fact cannot be adjudicated under Section 482 Cr.P.C. and at this stage only *prima facie* offence can be seen as laid down in several judgment.

16. Learned counsel for the opposite party no.2 as well as learned AGA further submit that a proper inquiry has been conducted and charge-sheet has been submitted against the applicant, therefore, there is no illegality and infirmity in the summoning order. They further submit that the writ court has passed the order in separate proceedings regarding appointment of Authorized Controller and has observed that only because the alleged document dated 17.05.1993 does not find mention in the dispatch register, therefore, the same is not forged but has not given any such finding about the document being a genuine one.

17. It is further submitted that in case a detailed inquiry was directed by the Hon'ble Court, in compliance of the same, order dated 08.09.2022 was passed and if the guidelines and observations as made by the Court were not followed, either contempt petition should have been filed or the order should have been challenged on the same ground. They further submit that the orders of Director of Education, Allahabad and DIOS as well as

other authorities as placed mentioning about the order dated 17.05.1993 goes to show the conspiracy as hatched by the education department, which, when traced by the opposite party, the present FIR was lodged.

18. During the course of investigation, the Investigating Officer has recorded that statement of the informant and other witnesses who have clearly stated that the order dated 17.05.1993 is forged and fabricated as no such document has ever been issued by the department. The informant also moved an application under Right to Information Act, 2005 before Joint Director of Education, Meerut on 05.03.2011 and the office of Joint Director of Education informed that the order dated 17.05.1993 was not issued/dispatched by the said office, thus the Investigating Officer has collected material evidence against the applicant and has submitted a charge sheet which discloses for cognizable offence.

19. Learned AGA as well as learned counsel for the opposite party no.2 further submit that the applicant has rushed to this Court by filing present application under Section 482 Cr.P.C. without availing the statutory remedy available under Section 239 Cr.P.C. They further submit that the court below can deal with the grounds raised in support of this application, thread bare at the first instance as it has the advantage of original record.

20. So far as the fact that order of Civil Court is binding upon the Criminal Court, there is no such order from any Civil Court finding the document dated 17.05.1993 genuine and after a detailed inquiry, order dated 08.09.2022 has been passed without challenging the inquiry on the ground of the same being defective.

21. As regards the submission of learned counsel for the applicant regarding investigation not being conducted properly, the same cannot be taken as a ground for invoking inherent powers under Section 482 Cr.P.C. as charge sheet cannot be quashed on the ground of defective investigation as is settled position of law.

22. On the above premise, the learned AGA submits that no interference is warranted by this Court in the present application under Section 482 Cr.P.C.

23. When confronted with above, learned counsel for the applicant could not overcome the same.

24. Having heard the learned counsel for applicant, the learned A.G.A. for State, learned counsel for the opposite party no.2 and upon perusal of the record, this court finds that no useful purpose

shall be served in keeping this application pending, as the grounds raised by the learned counsel for applicant in support of this application can very well be examined by court below meticulously at the time of deciding the discharge application as court below has the advantage of having the original record.

25. Accordingly, with the consent of learned counsels for the parties, this application is disposed of finally with a direction to the applicant to approach court below by filing a discharge application in terms of Section 239 Cr.P.C. seeking his discharge in above mentioned criminal case. In case, such a discharge application is filed by applicant within a period of **two months** from today along with certified copy of this order, the court below shall proceed to decide the same by a reasoned and speaking order within a period of **two months** thereafter, provided there is no other legal impediment.

26. It goes without saying that till the disposal of discharge application as directed above, court below shall not proceed further with the matter.

Order Date :- 3.9.2024

Kalp Nath Singh