

Court No. - 29

Case :- APPLICATION U/S 482 No. - 1336 of 2015

Applicant :- Somendra Pal Singh

Opposite Party :- The State Of U.P And Anr.

Counsel for Applicant :- Prashant Singh Atal, Anurag Shukla, Dr. Pooja Singh

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Mrs. Renu Agarwal, J.

1. Present application has been filed on behalf of the applicant with prayer to quash the impugned charge sheet No.132 of 2007 dated 09.07.2007 filed in Case Crime No.62 of 2007, under sections 323, 504, 506, 427, 379, IPC, and section 3(1)(X) SC/ST Act, Police Station Krishna Nagar, District Lucknow and impugned summoning order dated 31.08.2007, passed by the Special Chief Judicial Magistrate (Custom), Lucknow and all subsequent orders. It is also prayed to stay the entire criminal proceeding of Criminal Case No.5506 of 2012 (State Vs. Brij Pal Singh Tomar and others), pending before the Additional Chief Judicial Magistrate-VIth, Court No.30, Lucknow.

2. It is submitted that according to the allegations contained in the FIR opposite party no.2 was allegedly having a plot in Mohalla-Sneh Nagar on which he had allegedly built a boundary wall with an iron gate. On 07.02.2007 at about 4 P.M. informant alongwith his servant Babu Lal Pasi has come to his plot and it was informant by his neighbors Ashok Nigam and others that informant's iron gate was allegedly stolen by the petitioner, his brother and their father and after breaking down southern boundary the bricks was also stolen by them. On being asked about the incident, all the petitioners started abusing the opposite party no.2 using abusive languages. It is also alleged in the FIR that petitioners also assaulted the Babu Lal Pasi and he was medically examined, but later on in his statement recorded under section 161 Cr.P.C. informant stated that Babu Lal Pasi was not medically examined and no medical report is filed during investigation. After lodging of the FIR police reached at the place of occurrence and found that gate was properly placed and allegation regarding theft of gate was found false by the police. Investigating officer i.e. Circle Officer of Police Station

Alambagh, District Lucknow after investigation mentioned in the case diary dated 17.02.2007 that Babu Lal Pasi was not present at the time of occurrence, nor he was medically examined, nor he accompanied informant to the police station. Informant is advocate by profession and he has lodged false FIR against the petitioners in the name of Babu Lal Pasi. It is contended that the statement of Babu Lal Pasi were recorded under section 161 Cr.P.C. on 04.07.2007, who is alleged to have supported the alleged incident, but denied his medical examination. After investigation charge sheet was submitted on 09.07.2007. After submission of charge sheet matter was further investigated by the police with the permission of the Court vide order dated 10.12.2007, according to the provisions of section 173(8) Cr.P.C. After further investigation it was found by the police that the land in question is in possession of the petitioner's and his family for last more than 30 years. On the date of occurrence i.e. 07.02.2007 petitioner was in Varanasi and co-accused Sushil Kumar Singh son of Brij Pal Singh was found in Saroj Institute of Technology and Medical Management, Sultanpur Road, Gram Ahamamau, Police Station Gosaiganj. They were not found involved in the case and hence final report was submitted by the police on 03.01.2009. Learned Magistrate vide order dated 27.05.2010 rejected the final report dated 03.01.2009 arbitrarily on the ground that accused have been summoned by the court by the previous charge sheet, hence they cannot be exonerated on the basis of final report submitted by the police under section 173(8) Cr.P.C. It is submitted that co-accused Sushil Kumar Singh had filed application under section 482 Cr.P.C. No.1234 of 2011 and this Hon'ble Court had passed interim order in favour of co-accused Sushil Kumar Singh and stayed the proceedings of court below. In the meantime father of petitioner namely Brij Raj Singh

Tomer died on 19.04.2008.

3. It is further submitted that at most it can be said that there was a civil dispute pending between the parties, which can be decided by the court of competent jurisdiction and giving the color of criminal dispute the impugned FIR was lodged by the informant. The impugned property was recorded in the name of Devi Prasad and Hanuman Prasad in 1416 Fasli under Class-IV. The land in question remained in peaceful possession of the petitioner's father since more than three decades. Being the land of Class-IV it cannot be sold out to any person. Raj Kumar Bali and Sardar Baldeo Singh tried to take forcible possession of the land in question on 30.11.1990 with the help of antisocial elements and attempted to dispossess the petitioner's father, then his father lodged FIR against them as Crime No.403 of 1990, under sections 143, 448, 504, 506, 380, IPC and both were sent to jail as well. When they failed to take forcible possession over the land in question, they had executed a sale deed in favour of the opposite party no.2 on 26.12.2001. Civil dispute also pending between the parties, which reached to this Hon'ble Court and this Hon'ble Court vide order dated 12.11.2009 passed in Writ Petition No.4510(M/S) of 2009 has been pleased to pass orders directing the parties to maintain status quo. Civil dispute was decided in favour of the petitioner by the Additional Civil Judge (Senior Division), Court No.22, Lucknow on 23.01.2012. It is also submitted that informant of the case was also died during pendency of case and Babu Lal Pasi has deposed in the court by way of affidavit that he do not know the informant nor any dispute happened before him. On the basis of entire evidence collected during the investigation final report was submitted by investigating officer, but court below has issued summoning order on 31.08.2007 without application of mind in a mechanical manner only on the ground

that petitioners have been summoned on the prior charge sheet. Hence the summoning order dated 31.08.2007 lacks merits and is liable to be quashed.

4. Learned AGA for the State did not oppose the prayer of petitioner and rather supported their version.

5. I have heard the rival submission of learned counsel for applicant Sri Anurag Shukla and learned AGA for the State and perused the record.

6. Perusal of record it transpires that cognizance was taken by the court below on 09.07.2007. Petitioner did not appear in the trial court, therefore, court below issued non-bailable warrant against the petitioner and thereafter warrant under section 82 Cr.P.C. Thereafter, petitioner and co-accused Sushil Singh Tomar moved an application before the court below through advocate for cancellation of order of non-bailable warrant and to recall the warrant under section 82 Cr.P.C. issued against them. Court endorsed in his order dated 04.03.2009 that Special CJM Lucknow permitted the then Circle Officer Alambag Lucknow Manish Kumar Mishra vide order dated 10.12.2007 for further investigation and in furtherance of further investigation Final Report No.01 of 2009 dated 03.01.2009 was submitted to the court below alongwith the prayer to reject the charge sheet filed earlier. Court concerned formulated two points of determination:- (1) Whether investigation officer can file final report, when he has already filed charge sheet against the petitioners. (2) When the petitioner had already filed Criminal Misc. Case No.1933 of 2008 in Hon'ble High Court and the proceedings are not stayed, whether the same relief can be granted by the trial court, and fixed 04.04.2009 for hearing. On 27.05.2010 Additional Chief Judicial Magistrate, Court No.5 decided protest application and the objection filed by the parties

and reached to the conclusion that once the court has taken cognizance on the charge sheet filed earlier and accused has been summoned, then the investigating officer has no right to file protest application thereafter. Hence court rejected the final report and summoned the petitioner on the basis of charge sheet filed earlier.

7. So far as contention of section 3(1)(X) of SC/ST Act is concerned, no FIR was lodged by Babu Lal, who is Pasi by caste. The alleged FIR was lodged by informant who does not belong to SC/ST and Babu Lal Pasi produced his affidavit in the court of Additional CJM, Ayodha Prakaran, Lucknow, which annexed as annexure no.16 to the application stating that he does not know the accused Brij Pal Singh or any of his family members. Informant Nand Kumar Shukla stated him to pay Rs.10,000/-, if he support the FIR version in Case Crime No.62 of 2007. He never went to the place of occurrence nor he is aware of any such incident. On the basis of the statement of Babu Lal Pasi investigating officer submitted his report and handed over the investigation to another investing officer for further investigation. So far as charge of 379 IPC is concerned, during the investigation investigating officer himself found that the iron gate which is alleged to have stolen by the petitioner, his brother and father is well placed on the southern disputed wall, hence no prima-facie case was found against the petitioner, his brother and father under section 379 IPC.

8. Informant in his statement recorded under section 161 Cr.P.C. stated that the petitioner and co-accused abused and addressed the Babu Lal Pasi by caste, who has already filed his affidavit against his contents. Informant himself stated in his statement under section 161 Cr.P.C. that Babu Lal Pasi was not medically examined by him, therefore, no case of marpeet is prima-facie

found, during the investigation. Investigating officer recorded the statement of independent witnesses Ravindra Singh, Arun Singh and Raguvir Singh, who stated in their statement that Babu Lal Pasi was not present at the spot on the date of occurrence.

9. In Misc. Single No.4510 of 2009 filed regarding property in dispute, this Hon'ble Court has directed the parties to maintain the status-quo till the disposal of civil suit. It is worth mentioning here that case was re-investigated with the permission of court, hence court cannot rejected the final report only on the basis that previously charge sheet was filed in the case. If the case is so that charge sheet was already filed in the case then there was no need to re-investigate the case. If court has permitted to re-investigate the case, the court must consider the conclusion of re-investigation also. During the re-investigation investigating officer found that during the spot inspection both the parts of iron gate were well placed with southern wall. During the course of investigation investigating officer found that Dr. Alok Mishra, Assistant Director of the Saroj Institute of Technology and Medical Management, Sultanpur Road, Gram Ahamamau, Police Station Gosaiganj had issued a certificate vide latter SIT/2006-2007/DIR/946 dated 31.08.2007 stating that Sushil Kumar Tomar was present in the College on 07.02.2007 since 09.00 A.M. to 4.30 P.M. and he has signed the daily attendance register, whose name was entered at Sl. No.33.

10. Investigating officer also found that petitioner Somendra Pal Singh was found at Varanasi and he had confirmed the reservation ticket no.27030930 and 39030929. Investigating officer also verified the certificate of attendance issued by Sri Alok Rastogi son of R.S. Rastogi, resident of 20/6, Kavir

Nagar, Durgakund, Varanasi, that petitioner was present in Varanasi 07.02.2007 and 08.02.2007. Said certificate was issued on the later pad of Ajanta Farma Limited. The petitioner his brother Sushil Singh Tomar were not present at the place of occurrence on the date of alleged incident. Petitioner Somendra Pal Singh travelled on seat no.39 and one Shailendra Kumar travelled on seat no.40. Investigating officer has recorded the statements of Sunil Kumar Verma, Shantanu Singh, Sant Ram Singh, Vipendra Shukla, Manoj Singh, Vimlendra Singh, Hawaldar Singh, who denied any dispute on the relevant date at the place of occurrence. Therefore, investigating officer has submitted final report in the case. It is pertinent to mentioned here that informant of the case has already expired and if accused are summoned and tried in the aforesaid case, there is none to prove the incident. Babu Lal Pasi has already moved an affidavit in the court to the intent that he is not present on the spot on the date of incident.

11. Learned counsel for the applicant argued that in **Pakhandu Vs. State of Uttar Pradesh, Criminal Misc. Application No.3264 of 2000**, Hon'ble Apex Court has held that "summoning cannot be made on the basis of protest application without procedure of complaint. I have perused section 21 of the above mentioned case law. The ruling goes against the facts of the case. In this case Hon'ble Apex Court held that *"the Magistrate thus appears to have taken cognizance under Section 190(1)(b) of the Cr. P.C If the cognizance was taken under said provision there was no question of applicability of relevant provisions applicable to complaint cases including proviso to Section 202(2), Cr. P.C. The Magistrate was thus not bound to call upon the complainant to produce all his witnesses and examine them on oath. Even otherwise also in view of Apex Court decision no room for doubt is left to hold that the*

question of complying with the proviso to sub-section (2) of Section 202 arises only in cases where the Magistrate before taking cognizance of the case decides to hold the inquiry under Section 202."

12. The Court has discretion to take cognizance either under section 190 Cr.P.C. or to direct investigation or to proceed the case as a complaint case. In the present case court has decided to take cognizance under section 190(1)(b) of Cr.P.C., hence the rolling has no effect on this case. Learned counsel for the applicant also placed reliance in the judgment of Apex Court in the case of **Rakesh and another Vs. State of Uttar Pradesh and another, (2014) 13 SCC 133** and **Namdev Sharma Vs. State of Utar Pradesh, Criminal Misc. Writ Petition No.10162 of 2020.**

13. It also transpires from the record that civil dispute is already pending between the parties in civil court and the present FIR was lodged just giving the color of criminal proceeding. The suit is of civil in nature, which can be effectively decided by the civil court itself.

14. In **Paramjeet Batra Vs. State of Uttarakhand & Others, (2013) 11 SCC 673**, Hon'ble Apex Court held that "*while exercising its jurisdiction under section 482 of the Code, the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Wherein essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil*

nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court."

15. In **Salim @ Shalu @ Salim Vs. State of Uttar Pradesh, Criminal Appeal No.2344 of 2023**, Hon'ble Apex Court held that *"whenever an accused comes before the Court invoking either the inherent powers under section 482 of the Code of Criminal Procedure or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the Criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines."*

16. Thus Court finds that re-investigation was conducted by the investigating officer with the permission of the trial court. Investigating officer recorded the statement of further witnesses of fact and find that no such occurrence happened. Father of petitioner namely Brij Pal Singh has already died. Petitioner as well as his brother co-accused Sushil Kumar Tomar were found out of station with regard to their jobs and certificates were duly

verified by the investigating officer during investigation. Babu Lal Pasi, who was the stare witness of prosecution has already given his affidavit in the court and stated during the investigation that he does not know petitioner, his brother and father and he was not present at the spot. Further informant himself has also died, as per the court statement of learned counsel for the applicant, which is also confirmed by learned AGA. Final report could not be rejected merely on the ground that earlier court has taken cognizance on the charge sheet. If that was so, there was no need to permit the investigation officer for further investigation. If the trial proceeds against the remaining accused i.e. petitioner Somendra Pal Singh and his brother co-accused Sushil Singh Tomar, no fruitful purpose shall be served, as informant and witnesses have died. Court has erred in rejecting the final report merely on the basis of fact that earlier cognizance has been taken on the charge sheet against the petitioner. Hence the order of trial court is perverse and need to be quashed.

17. Accordingly, the present application under section 482 Cr.P.C. is hereby **allowed**.

18. The impugned charge sheet No.132 of 2007 dated 09.07.2007 filed in Case Crime No.62 of 2007, under sections 323, 504, 506, 427, 379, IPC, and section 3(1)(X) SC/ST Act, Police Station Krishna Nagar, District Lucknow as well as impugned summoning order dated 31.08.2007, passed by the Special Chief Judicial Magistrate (Custom), Lucknow and all subsequent orders, are hereby quashed.

(Renu Agarwal,J.)

Order Date :- 9.5.2024/VKG