

Neutral Citation No. - 2024:AHC-LKO:24296

A.F.R.

Reserved

Case :- APPLICATION U/S 482 No. - 1872 of 2011

Applicant :- Ramesh Iyer

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

Counsel for Applicant :- B.K Singh,Aishwarya Pratap Singh,Sandeep Kumar(Trivedi)

Counsel for Opposite Party :- Govt. Advocate,Apoorv Pandey,Gyanendra Kumar Pandey,Sachin Srivastava

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Sri Naresh Kaushik, learned Senior Advocate assisted by Sri Aishwarya Pratap Singh, learned counsel for the petitioner, Sri Nirmal Kumar Pandey, learned AGA for the State and Sri Gyanendra Kumar Pandey, Advocate who has filed his 'Vakalatnama' along with counter affidavit on behalf of opposite party no. 2, the same are taken on record.

2. Learned counsel for the petitioner has submitted that he will not file rejoinder affidavit and has requested that the matter may be heard finally on the basis of material available on record.

3. This petition has been filed under section 482 Cr.P.C. by the petitioner for setting aside / quashing the impugned summoning order dated 15.10.2010 passed by the learned C.J.M., Bahraich against the petitioner and 6 others u/s 406, 419, 420 IPC in Complaint Case No. 4383 of 2010 (Ramesh Chandra Mishra vs. Ramesh Iyer and others) contained as Annexure no. 1.

4. By means of this petition the petitioner has prayed following relief :

"Wherefore, for the facts and reasons stated in the by an petition supported by affidavit, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to quash the impugned summoning orders dated 15.10.2010 passed by learned Chief Judicial Magistrate Bahriach as well as Order dated 10.02.2011 by which the bailable warrant has been issued against the petitioner in complaint case no. 4383/2010 Ramesh Chandra Mishra Vs Ramesh Iyer & others

contained as Annexure no 1 & 2 to this petition It is further prayed that this Hon'ble Court may kindly be pleased to stay the proceedings of complaint case no.4383/2010 Ramesh Chandra Mishra Vs. Ramesh Iyer & others pending before Chief Judicial Magistrate Bahraich, during pendency of the petition."

5. That the petitioner is working as Managing Director of Mahindra & Mahindra Financial Services Ltd. (referred as 'MMFSL' hereinafter), having his office at Mumbai and having no concern with day-to-day affairs of the Branches.

6. Learned Counsel for the petitioner submits that the facts of the case, in brief, are that in the year 2006 a Bolero vehicle was financed to one Durgesh Kumar Vaishya by MMFSL, which was surrendered by him after default of installment. The said Vehicle was thereafter sold to opposite party no. 2, Ramesh Chandra Mishra for Rs. 3,50,000/-, who issued 4 post-dated cheques bearing Cheque No. 881607 dated 26.12.2007 for Rs. 1,00,000/- Cheque No. 881608 dated 28.12.2007 for Rs. 1,00,000/-, Cheque No. 881609 dated 31.12.2007 for Rs. 50,000/- and Cheque No. 881615 dated 31.01.2008 for Rs. 1,00,000/-.

7. That the opposite party no. 2 unauthorizedly sold the said Vehicle to one Mehtab Gori for an amount of Rs, 3,51,000/- showing himself to be Authorized Representative and employee of MMFSL, he fabricated a payment receipt dated 28.11.2007 on a Rs. 20/- Judicial Stamp Paper Impersonating as Recovery Officer of the company. The opposite party no. 2 also managed to transfer the vehicle from the R.T.O. on the basis of forged and fabricated documents and got issued a temporary authorization of registration from the R.T.O. in the name of his Purchaser Mehtab Ahmad. In the meantime 2 out of 4 cheques provided by the opposite party no. 2 to MMFSL got dishonored due to insufficient funds, against which the MMFSL filed a complaint case on 16.06.2008 u/s 138 of Negotiable Instruments Act bearing Case No. 713/2008 (later changed to Case No. 300 of 2010 after transfer), the 2nd Additional Civil Judge, (SD), Faizabad summoned the opposite party no. 2 in the said case.

8. That the opposite party no. 2 coming to know about the summoning under Negotiable instruments Act, filed a complaint / application u/s 156 (3) Cr.P.C. in the court of C.J.M., Bahraich against three persons only including the present applicant alleging that the MMFSL has taken Rs. 1,00,000/- cash and Rs. 1,50,000/- through cheque, but has not handed over the vehicle, instead sold it to some third person and misappropriated the money given by the opposite party no. 2.

9. That the said application u/s 156 (3) Cr.P.C. was allowed by the C.J.M., Bahraich on 18.10.2008 and direction was issued to lodge an FIR, the concerned police lodged FIR No. 72/2008 u/s 406, 409 IPC, P.S. Kotwali Bahraich, District Bahraich (Annexure-6). The concerned Police after detailed investigation, expunged the name of all the three persons in the FIR, and filed charge-sheet on 19.03.2009 against the opposite party no. 2, Ramesh Chandra Mishra itself U/s 406/409/419/420/467/468 IPC. The person Mehtab Gori to whom the opposite party no. 2 has sold the said vehicle also gave statement against the said opposite party no. 2.

10. That the opposite party no. 2 Ramesh Chandra Mishra, when came to know about the charge-sheet against him, he filed a complaint case before C.J.M., Bahraich on 24.09.2010 on totally false and concocted facts and arrayed even the Investigation officer of the case as well as the purchaser of the vehicle as accused. There are general allegations against the present petitioner and no specific role has been assigned.

11. That on the same day i.e. 24.09.2010, the statement under section 200 Cr.P.C. of the complainant has also been recorded by the learned C.J.M., the complainant (opposite party no. 2) in this petition repeated the contents of his complaint.

12. That on 12.10.2010 the complainant got the statement of two chance witnesses recorded u/s section 202 Cr.P.C., the said witnesses namely, Santosh Yadav and Mohammad Ahmad, who

claimed that they were present in the Branch office of MMFSI, at Bahraich for some loan inquiries when alleged scuffle between the complainant and branch officials took place, but they have not whispered a word about the present petitioner. On the basis of these statements the learned C.J.M., Bahraich issued summons to the petitioner and 6 other persons for facing trial us 406,419,420 IPC, on a proforma summoning order, without any application of the judicial mind.

13. While appreciating the aforesaid facts this Court on the first date of admission granted confirmed interim order on 21.4.2011 which reads as under :

"Issue notice to respondent no. 2.

List after service report.

Upon perusal of the record, it is apparent that for the same subject matter as respondent no. 2 is himself as an accused on the basis of charge-sheet dated 19th of March, 2009. Therefore, prima facie, I am of the view that the complaint lodged by him is unsustainable. Under this circumstance, I hereby stay the proceeding of Complaint Case No. 4383 of 2010 pending before the court of Chief Judicial Magistrate, Bahraich till further order of this Court."

14. Learned counsel for the petitioner has further submitted that the impugned summoning order issued by the Learned Magistrate is bad in law and against the settled principles of law, as despite noting the fact that the petitioner and some other persons who have been made accused in the alleged complaint does not reside in the territorial jurisdiction of learned magistrate, he proceeded to issue summons without complying the mandatory provisions of section 202 (1) Cr.P.C. in this regard the Hon'ble Supreme Court in the case of **Abhijit Pawar vs. Hemant Madhukar Nimbalkar & Anr "(2017) 3 SCC 528"** has categorically held that "...Thus in those cases where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, it is mandatory on the part of the magistrate to conduct an enquiry or investigation before issuing the process, so that false complaints are filtered and rejected."

15. It has been submitted that the applicant is Managing Director of the MMFSL, under whom, thousands of branches across India functions, it is impossible for a person sitting at Mumbai to interfere or monitor day to day functions of a Branch, the petitioner in his entire career never visited Bahraich. Even for the sake of arguments, even if entire material on record is taken on its face value, then also by no stretch of imagination, it discloses any cognizable offence by the present petitioner/applicant.

16. In the light of the aforesaid submission the learned counsel for the petitioner has submitted that the learned Magistrate has not applied his judicial mind while issuing the summons. The Learned Magistrate failed to comply with the mandatory provisions of Section 202 (1) Cr.P.C. as settled by the Hon'ble Supreme Court in the catena of Judgments. That Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. There is absolutely non-application of judicial mind while issuing the summons and it appears that the Learned Magistrate is swayed away on the basis of concocted statements without any substance on record. The learned Magistrate totally failed to consider that the opposite party no. 2, Ramesh Chandra Mishra himself has been made an accused in the same case and Police has filed charge-sheet against him in heinous offences. The principles of vicarious liability is inapplicable in the present set of facts and circumstances.

17. Learned counsel for the petitioner has submitted that now these days there is very high tendency to implicate higher officials of the company in criminal cases to exert pressure.

18. In support of his submissions, learned counsel for the petitioner has placed reliance on the following judgments of Hon'ble Apex Court in re : ***Pepsi Foods Ltd. vs. Special Judicial Magistrate (1998) 5 SCC 749; Ravindranatha Bajpe v. Mangalore***

Special Economic Zone Ltd., (2022) 15 SCC 430; and State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426.

19. Learned AGA has, however, tried to defend the impugned summoning order as well as order to issue bailable warrant but could not dispute the aforesaid factual and legal submissions of learned counsel for the petitioner.

20. Learned counsel for the private opposite party has also tried to defend the impugned orders but could not convince the court as to how for the same subject matter where the opposite party no. 2 himself is an accused on the basis of charge-sheet dated 19.3.2009, the complaint can be lodged against him after filing the aforesaid charge-sheet on 24.9.2010.

21. In the counter affidavit which has been filed on 19.2.2024, Sri Gyanendra Kumar Pandey could not demonstrate any material justifying the complaint of opposite party no. 2 and aforesaid impugned orders. Sri Pandey has stated that when the complaint has been filed; statement u/s 200 and 202 Cr.P.C. has been recorded; summoning order has been issued against the petitioner and on account of non-cooperation of the petitioner the Bailable Warrant has been issued, then this Court may not interfere in the aforesaid proceedings and the direction may be issued to the petitioner to appear before the court concerned and participated in the proceedings. Therefore, Sri Pandey has requested that the instant petition may be dismissed.

22. Heard learned counsel for the parties, perused the material available on record as well as decisions of the Apex Court, so referred by the parties at the very outset, I am of the considered opinion that while taking cognizance of the allegations of the complaint where the opposite party / alleged accused person is residing at a place beyond the area in which the Magistrate exercises his jurisdiction and the allegations are not related to the

offences triable by the sessions it would be mandatory on the part of the Magistrate to conduct the inquiry or investigation before issuing the process in terms of section 202(1) Cr.P.C., so that false complaints are filtered and rejected.

23. The Apex Court in re: **Abhijit Pawar (supra)** vide para 23 has held as under :

"23. Admitted position in law is that in those cases where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, it is mandatory on the part of the Magistrate to conduct an enquiry or investigation before issuing the process. Section 202 CrPC was amended in the year 2005 by the Code of Criminal Procedure (Amendment) Act, 2005, with effect from 22-6- 2006 by adding the words "and shall, in a case where the accused is residing at a place beyond the area in which he exercises his Jurisdiction". There is a vital purpose or objective behind this amendment, namely, to ward off false complaints against such persons residing at a far-off places in order to save them from unnecessary harassment. Thus, the amended provision casts an obligation on the Magistrate to conduct enquiry or direct investigation before issuing the process, so that false complaints are filtered and rejected. The aforesaid purpose is specifically mentioned in the note appended to the Bill proposing the said amendment.

24. Though at the time of issuing summons the mini trial is not required by the court concerned but, at least, the Magistrate must apply its judicious mind appreciating and perusing carefully the material available on record to be satisfied as to whether the allegations are prima facie convincing to summon the person. The law is trite that summoning of an accused in a criminal case is a serious matter, therefore, the order of the Magistrate summoning the accused must reflect that he has applied the mind to facts and circumstances and law applicable thereto.

25. The Apex Court in re: **Pepsi Foods Ltd. (supra)** vide para 28 has held as under :

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the

criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

26. Similarly in re: **Ravindranatha (supra)**, vide **para 8.3** it has been observed that :

"8.3. As held by this Court in India Infoline Ltd. [GHCL Employees Stock Option Trust v. India Infoline Ltd., (2013) 4 SCC 505: (2013) 2 SCC (Cri) 414], in the order issuing summons, the learned Magistrate has to record his satisfaction about a prima facie case against the accused who are Managing Director, the Company Secretary and the Directors of the Company and the role played by them in their respective capacities which is sine qua non for initiating criminal proceedings against them. Looking to the averments and the allegations in the complaint, there are no specific allegations and/or averments with respect to role played by them in their capacity as Chairman, Managing Director, Executive Director, Deputy General Manager and Planner & Executor. Merely because they are Chairman, Managing Director/Executive Director and/or Deputy General Manager and/or Planner / Supervisor of A-1 and A-6, without any specific role attributed and the role played by them in their capacity, they cannot be arrayed as an accused, more particularly they cannot be held vicariously liable for the offences committed by A-1 and A-6."

27. The present case is also covered by para. 102 of the judgment of the Apex Court in re: **Bhajan Lal (supra)**, which reads as under :

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae

and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code. (5) Where the allegations made in the FIR or complaint are so absurd and inherently Improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code of the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

28. In the present case the learned court concerned has not undertaken the required exercise u/s 202(1) Cr.P.C. and has not applied its judicial mind to peruse carefully the relevant fact that the complainant / opposite party has filed the complaint against the petitioner on 24.9.2010 in the same subject matter where the charge-sheet has already been filed against him before the competent court of law on 19.3.2009. If the magistrate had perused carefully the allegations and material available on record by applying

its judicious mind the very fact would have been cleared that the present complaint is nothing but a counter-blast and by filing the aforesaid complaint the opposite party no. 2 has misused the process of law / court.

29. The facts and circumstances of the present case are squarely covered in para 102 (5) and 102(7) of ***Bhajan Lal (supra)*** inasmuch as the allegation made in the complaint are so absurd and inherently improbable inasmuch as the allegations, so leveled against the petitioner, are not only baseless and misconceived but those allegations have been leveled on account of malafide intention and ulterior motive prosecuting the petitioner maliciously for wreaking vengeance. Therefore, in view of the aforesaid facts and circumstances, I have no hesitation to quash the impugned complaint bearing Complaint Case no. 4383/2010 (Ramesh Chandra Mishra Vs Ramesh Iyer & others) as well as impugned summoning order dated 15.10.2010 and Bailable Warrant dated 10.2.2011 passed by the C.J.M., Bahraich.

30. Accordingly, I hereby ***quash*** the impugned complaint bearing Complaint Case no. 4383/2010 (Ramesh Chandra Mishra Vs Ramesh Iyer & others) as well as impugned summoning orders dated 15.10.2010 passed by learned Chief Judicial Magistrate Bahraich as well as Order dated 10.02.2011 by which the bailable warrant has been issued against the petitioner in Complaint Case no. 4383/2010 (Ramesh Chandra Mishra Vs Ramesh Iyer & others) contained as Annexure no 1 & 2 to the writ petition.

31. Petition is ***allowed***.

32. No order as to costs.

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(Rajesh Singh Chauhan, J.)

Order Date :- 19.3.2024

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