

Court No. - 35

Case :- APPLICATION U/S 482 No. - 3353 of 2014

Applicant :- Ram Saran And Ors.

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

Counsel for Applicant :- Sushil Kumar Gupta

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Arun Kumar Singh Deshwal,J.

Heard learned counsel for the applicant, learned AGA for the State and perused the record.

Despite Service of notice no one has appeared on behalf of the opposite party no.2.

Present application under Section 482 CrPC has been filed with the following prayer:-

"To quash the summoning order dated 19.02.11 passed by A C.J.M. 5 Hardoi in case no Case no. 7445/10 U/S- 323, 452, 376, 504, 506, IP C relating to P.S Shahabad, District Hardoi. Contain in Annexure no 1 and judgment and order dated 1.5. 2014, contained in Annexure no 2 passed in criminal revision no n68/2014 Ram Saran & others Vs State of UP & other passed by District and session court Hardoi and also be pleased to quash the entire proceeding of case no. 7445/10 arising out on the basis of the aforesaid case in the interest of law and justice.

To stay the summoning order dated 19.02.11 passed by A C.J.M. 5TH Hardoi in case no 7445/10 U/S- 323, 452, 376, 504, 506, IPC relating to P.S Shahabad, District Hardoi. contained in Annexure no 1 during the pending of the present petition in the interest of law and justice."

The contention of the learned counsel for the applicant is that the impugned proceeding is malicious in nature because prior to the lodging of impugned complaint the applicant no.1 has lodged an FIR against the husband of opposite party no.2 as well as other persons for committing forgery and also for committing the murder of his father which was registered as Case crime No.917 of 2010 under Sections 420, 302, 301 IPC and 3(2)(V) of SC/ST Act on 04.08.2010 and subsequently just to make pressure upon the petitioner no.1, the impugned complaint was lodged on 14.10.2010. It is also submitted that the other applicant nos.2 and 3 are nephew of applicant no.1 and the dispute between the parties is regarding the land and for that just to grab the land husband of opposite party no.2 also murdered his father Heeralal on 25.07.2009 by strangulating him. It is further submitted by the counsel for the applicant that

from the perusal of the complaint as well as statements recorded under Sections 200 and 202 CrPC it is clear that allegations are absolutely vague and no case is made out against the applicant. It is lastly submitted that though in the complaint it was mentioned that the applicants had committed rape upon the opposite party no.2, one by one, and thereafter on raising the alarm two villagers Hansraj and Suresh as well as her husband came on the spot but none of the above named witnesses were examined and the two witnesses who were examined under Section 200 and 202 CrPC are not resident of the village of the opposite party no.2, Moolchand himself was an interested party. Even from the statement of opposite party no.2 recorded under Section 200 CrPC she did not specifically stated committal of rape on the part of the applicants, therefore the impugned proceeding may be quashed.

Per contra, learned AGA submitted that there is specific allegation in the complaint as well as in the statements of witnesses recorded under Section 200 and 202 CrPC against the applicant, therefore prima facie case is made out against the applicants, therefore there is no ground for interference in the present case.

After hearing learned counsel for the parties and perusing the record, it appears that prior to lodging of the impugned complaint on 14.10.2010 petitioner no.1, who is also the real brother of husband of opposite party no.2, had lodged an FIR dated 4.8.2010 against the husband of opposite party no.2 as well as three other persons for grabbing the land of his father Heeralal by committing forgery and thereafter committing his murder on 24/25.07.2009 by strangulating him and thereafter just to destroy the evidence they also cremated Heeralal without informing other family members. From perusal of complaint as well as statement of opposite party no.2 it appears that though, in the complaint she made allegation that the applicants committed rape upon her one by one, but in her statement under section 200 CrPC no specific allegation of committing rape was made against the applicants. The only allegation in her statement is that the applicants had beaten her and committed illegal act (गलत काम) but witnesses of the incident, as mentioned in the complaint as well as the statement of the opposite party no.2, were also not produced before the Court and the witnesses who were produced before the Court were not eyewitness and belong to different village. Therefore, on the one hand allegations are absolutely vague and they also appear to be in counter blast to the FIR lodged by the petitioner no.1 against the husband of opposite party no.2. It is also not in dispute that no medical examination of the opposite party no.2 was conducted.

The Hon'ble Apex Court in the case of **Mahmood Ali and others Vs. State of U.P. and others** in Criminal Appeal No. 2341 of 2023 dated 08.08.2023 as well as in the case of **Shalib@Shalu@Salim Vs. State of U.P. and others** in Criminal Appeal No. 2344 of 2023 decided on 08.08.2023 observed thus:-

"whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) 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. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. 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."

The Hon'ble Apex Court again in the case of **State of Haryana and ors. Vs. Bhajan Lal and ors.** in 1992 SCC Supl. (1) 335 observed that the Court is justified in quashing the proceeding or FIR 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 and 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.

From the above facts and circumstances it is clear that from the perusal of complaint alongwith the statement of the opposite party no.2 recorded under Section 200 and 202 CrPC and also the statement of other witnesses recorded under Section 200 CrPC, the allegations are absolutely vague and self contradictory and even the witnesses are not the persons who were mentioned in the impugned complaint as well as in the statement of opposite party no.2 and also the fact that FIR was lodged by the applicant against the husband of opposite party no.2 under Sections 302 CrPC and 420 IPC for committing forgery and for grabbing the land of his father Heeralal and

thereafter murdering him by strangulation, therefore the impugned proceeding is also appears to be mala fide and maliciously instituted with an ulterior motive for wreaking vengeance on the applicants who were also the heir of the deceased, Heeralal and they were also entitled to inherit the land of Heeralal along with the husband of opposite party no.2

In view of the above, the proceeding of complaint case no.7445 of 2010 under Section 323, 452, 376, 504 and 506 IPC, P.S.- Shahabad, District- Hardoi, pending in the Court of C.J.M.- 5th, Hardoi alongwith the summoning order dated 19.02.2011 is hereby quashed.

With the aforesaid the instant application stands **allowed**.

Order Date :- 18.1.2024

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