

Court No. - 30

Case :- APPLICATION U/S 482 No. - 556 of 2014

Applicant :- Ram Bux And Ors.

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

Counsel for Applicant :- Vipin Kumar Mishra

Counsel for Opposite Party :- Govt. Advocate, Jitendra Bahadur Singh

Hon'ble Om Prakash Shukla, J.

(1) This Court, vide order dated 20.08.2024, while considering an application for recall of order dated 08.08.2024 (C.M. Application No. IA/8/2024), wherein the impugned summoning order dated 07.12.2013 passed by the Judicial Magistrate-III in Case No. 1197 of 2012 under section 323, 504, 506 IPC, Police station Gosainganj, District Faizabad and all other consequential proceedings emanating therefrom was quashed, has passed the following order:

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(33) Having gone through the aforesaid facts and circumstances, it is an undisputed fact that Section 506 I.P.C. is a cognizable offence. However, there is nothing on record which shows the circumstances under which instead of F.I.R., NCR has been lodged particularly under Section 506 I.P.C., which is a cognizable offence in the State of U.P.

(34) Under these circumstances, learned Government Advocate shall seek instructions in the matter and file a personal affidavit of the officer concerned who has lodged the NCR, explaining therein the detail circumstances under which instead of F.I.R., NCR has been lodged particularly under Section 506 I.P.C., which is a cognizable offence and also explain the reason as to why the NCR has been lodged instead of F.I.R. when he himself opined that offences under Sections 323, 504, 506 I.P.C. are made out against the petitioners even though Section 506 I.P.C. is a cognizable offence.

(35) Let a report be also called from the Judicial Magistrate-III, Faizabad who has passed the impugned summoning order

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dated 07.12.2013, to the effect whether the NCR No. 85 of 2008 was converted into F.I.R. or he took cognizance on NCR No. 85 of 2008 itself and whether inquiry in this respect was made prior [20] to passing the impugned order of summoning, on or before 13.09.2024.

(36) xxxxxxxxxxxxxxxx”

- (2) Pursuant to the aforesaid directions of this Court, personal affidavit dated 7th of September, 2024 has been filed by one Mr. Parshuram Ojha, Station House Officer (SHO) of Police Station Gosaiganj, district Ayodhya, stating that NCR No. 85 of 2008 dated 03.09.2008 under Sections 323, 504, 506 IPC was lodged under the direction of one Shri Phool Chand Prasad son of Rajlash, who was the SHO of the Police station at that point of time. The said affidavit also states that the investigation was conducted in view of the order dated 24.09.2008 passed under Section 155 (2) of the Code of Criminal Procedure, 1973 by the trial Court and, as such, after completion of investigation, the charge-sheet came to be filed. In the affidavit, it has also been stated that Mr. Parshuram Ojha, SHO has died about eight years ago and even the Investigating Officer, who conducted the investigation, has left for heavenly abode about five years ago, as per the Death Certificate filed along with the said affidavit.
- (3) It has also been narrated in the affidavit that NCR No. 85 of 2008 was lodged on 03.09.2008, during which period the order dated 01.08.2002 passed by the Allahabad High Court in the case of **Virendra Singh & others Vs State of Uttar Pradesh & Anr. :** 2002 CrL. L.J 4265, was prevailing. According to him, the Allahabad High Court, vide order dated 01.08.2002, had declared the UP Government Notification No.777/VIII 9-4(2)-37 Dated July 31,1989 as illegal, which, in turn, declared Section 506 of the IPC to be cognizable and non-bailable in the State of Uttar Pradesh. It has also been stated that pursuant to the said order dated 01.08.2002 passed by the Allahabad High Court,

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consequential directions were issued to the Principal Secretary (Home), Principal Secretary (Law), DGP, Uttar Pradesh for their compliance. It has also been stated in the affidavit that the SHO concerned at that point of time, in view of the direction received from the DGP office may have directed to register the NCR in the said peculiar circumstances. The affidavit has also stated that the applicant of the present application under Section 482 Cr.P.C. has been informed about the present proceedings vide notice dated 27.08.2024 and has submitted that the present application under Section 482 Cr.P.C., is without any legal force and should be dismissed in the ends of justice.

- (4)** This Court, while taking the aforesaid affidavit dated 07.09.2024 of Mr. Parshuram Ojha, Station House Officer (SHO) of Police Station Gosaiganj on record has noticed that the controversy relating to the nature of offence under section 506 IPC being cognizable and bailable or non-cognizable and non-bailable, stems out of the Criminal Law Amendment Act, 1932, which inter-alia states :-

"Section 10 of Criminal Law Amendment Act, 1932: -

Section 10: Power of State Government to make certain offences, cognizable and non-cognizable.

(1) The State Government may, by notification in the official Gazette, declare that any offence punishable under Sections 186, 188, 189, 190, 228, 295A, 298, 505, 506 or 507 of the Indian Penal Code, 1860, when committed in any area specified in the Notification shall notwithstanding anything contained in the Code of Criminal Procedure, 1898, be cognizable and thereupon the Code of Criminal Procedure, 1898, shall while such notification remains in force, be deemed to be amended accordingly.

(2) The State Government may, in like manner and subject to the like conditions, and with the

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like effect, declare that an offence punishable under Section 188 or Section 506 of the Indian Penal Code, 1860, shall be non-bailable.

- (5) Apparently, the State of Uttar Pradesh, vide Notification No.777/VIII 9-4(2)--87, dated 31st July, 1989 published in U.P. Gazette, Extra., Pt. A, Sec. (kha), dated 2nd August, 1989, in exercise of the aforesaid power vested by the aforesaid Section 10 of the Criminal Law Amendment Act, 1932 has declared the offence of Section 506 IPC, both cognizable and non-bailable, in the following words :-

“ In exercise of the power conferred by the section 10 of the criminal law amendment act, 1932 (Act No. XXIII of 1932) read with section 21 of the General Clauses Act, 1897 (Act No. 10 of 1897) and in supersession of the notifications issued in this behalf, the Governor is pleased to declare that an offence punishable under section 506 of the penal code 1860 when committed in any district of Uttar Pradesh shall notwithstanding anything contained in the Criminal Procedure Code, 1973 (Act No.2 of 1974) be cognizable and non-bailable.”

- (6) The legality and validity of the Notification No.777/VIII 9-4(2)--87, dated 31st July, 1989 was tested by a Full Bench of this Court in the case of **Mata Sewak Upadhyay and another versus State of U.P. and others:** 1995 JIC 1168 (Alld.), wherein the Full Bench held that the notification is not merely an amending Act but is a blend of substantive provisions as well as the provisions amending Cr.P.C. of 1898. The Court held that the Act of 1932 is still on the statute book, notwithstanding the repeal of Cr.P.C. 1898 and as such applying the rule of construction as laid down in Section 8 of the General Clauses Act, the Full Bench arrived at a conclusion that the notification issued under Section 10 with reference to Cr.P.C. 1898 should be read as having been issued with reference to the Cr.P.C. 1973 and that the law has to be construed in such a fashion as to make it workable and

enforceable, than to make it redundant. It was also held by the Full Bench of this Court that Section 10 of the Criminal Law Amendment Act, 1932 and Government Notification no.777/VIII-94 (2)-87 dated 2.8.1998 making Section 506 I.P.C. cognizable and non-bailable offence are valid.

- (7) The aforesaid decision of the Full Bench was approved by the Hon'ble Supreme Court in **Aires Rodrigues Vs Vishwajeet P. Rane** : (2017) 11 SCC 62. Noticeably, the question in that case was relating to validity of a similar notification issued under Section 10 of the Criminal Law Amendment Act, 1932 for the territory of Goa, Daman & Diu, wherein section 506 IPC was declared to be non-bailable and cognizable in the said territory. The Hon'ble Apex Court approved the view taken by the Full Bench of this Court in Mata Sewak Upadhyaya (Supra), in the following words :-

“ 12. We approve the view taken by the High Courts of Gujarat, Delhi, Allahabad and Madras in Vinod Rao, Sant Ram, Mata Sewak Upadhyaya and P. Ramakrishnan and disapprove the view taken by the High Court of Allahabad in Pankaj Shukla.”

- (8) Although, decision of this Court in the case of **Virendra Singh & others Vs State of Uttar Pradesh & Anr.** : 2002 (45) ACC 609, decided on 01.08.2002, has been relied upon in the personal affidavit dated 07.09.2024, to justify that since in the Virendra Singh's Case, this Court has held the notification dated 02.08.1998 to be illegal and as such the impugned NCR came to be registered under Section 506 IPC in accordance with Section 155 (2) of the Code of Criminal Procedure, 1973 instead of an FIR in accordance with Section 154 of the Code of Criminal Procedure, 1973, however, this Court feels that the fact remains that the Full Bench Judgment of this Court in Mata Sewak Upadhyaya's case (supra) was not brought to the notice of the learned Division Bench in Virender Singh's case (supra), which

as such came to be decided *per incurium*. Further, this Court in the case of **Parveen Kumar and others Vs. State of U.P. and another** : ADJ 2011 (5) 418, it was observed that since the Full Bench decision of this Court in Mata Sevak Upadhyaya (supra) has not been overruled or the learned counsel for the applicant has not stated that above decision has been set aside by the Apex Court, so the decision of Division Bench in *Virendra Singh Vs. State of U.P. and others* (supra) case cannot be given effect.

- (9) Thus, there is no ambiguity relating to the existence and enforceability of the Notification No.777/VIII 9-4(2)--87, dated 31st July, 1989 published in U.P. Gazette, Extra., Pt. A, Sec. (kha), dated 2nd August, 1989, issued by the State of Uttar Pradesh in exercise of the power vested by Section 10 of the Criminal Law Amendment Act, 1932, whereby the offence under section 506 IPC has been declared as cognizable and non-bailable.
- (10) Having held that offence under Section 506 is cognizable and non-bailable, the core argument of the applicant that they are entitled to the benefit of explanation to Section 2 (d) of the Code of Criminal Procedure, 1973 also falls flat under its own weight as the said explanation comes into play only if the police report discloses, after investigation, the commission of a non-cognizable offence, in which case the deeming effect metamorphoses the police report into a complaint. As the police report has been filed under Sections 323, 504 and 506 IPC, wherein although 323 and 504 IPC are non-cognizable but Section 506 IPC as being cognizable, the same cannot be quashed on the ground of being hit by the explanation to Section 2 (d) of the Code of Criminal Procedure. However, the learned counsel for the applicant has argued on merits explaining that merely the first part of Section 506 IPC is attracted, which prescribed for a maximum punishment of two years and as such it

may be held that the offence of Section 506 IPC is non-cognizable.

(11) This court has already observed vide order dated 20.08.2024 at paragraph 28 that the applicants had threatened to kill and run away from the place of occurrence in the following words :-

“(28) The record reveals that complainant-Bhagwandeem gave an oral information at police station Gosaiganj, district Faizabad on 03.09.2008, alleging that in the morning of 03.09.2008, when he was returning from his field and had reached in front of the house of Hari Ram, one Ram Ajore on seeing him abused him and also rushed to assault him. As soon as he (complainant) reached in front of his house, petitioners also came there and had assaulted him with kick and fists and when his wife Koyala Devi and his daughters, namely, Sunita and Girisha came forward to save him, they had also been assaulted with kick and fists and lathi, upon which they raised alarm and on listening alarm, villagers were gathered there, thereupon the petitioners while using abusive language and threatening to kill ran away.”

(12) On a plain reading of the allegations as narrated in the complaint, the second part of section 506 IPC is attracted and as such the argument of the applicant that the first part of section 506 IPC is attracted, is without any legal force. It is seen from the records that the Investigating Officer, after collecting credible evidence, recording the statements of witnesses, making spot inspection as well as collecting medical report of injured Smt. Shila Devi from Dr. Om Prakash, Medical Officer, P.H.C., Gosaiganj, Faizabad, submitted charge-sheet dated 10.04.2012 against the applicants as well as one Ram Ajore under Sections 323, 504, 506 I.P.C. before the Court of Judicial Magistrate-III, Faizabad, who registering the case as Case No. 1197 of 2012 and after taking

cognizance of the said charge-sheet dated 10.04.2012, summoned the applicants vide order dated 07.12.2013 passed in Case No. 1197 of 2012.

(13) Apparently, specific allegations have been made against the applicants, which has to be tested on the anvil of evidences collected and witnesses examined. Thus, this Court, while exercising its jurisdiction of inherent power under Section 482 of the Code of Criminal Procedure, is baulked by its self-imposed restriction to conduct any mini-trial and proceed any further in the present matter. It would be profitable to quote a recent judgment of the Apex court in **Central Bureau of Investigation Vs. Aryan Singh etc. : 2023 SCC Online 379**, wherein the Apex Court held that the scope of this Court while exercising power under Section 482 of the Code of criminal Procedure is very limited and a conduct of mini trial at the stage of discharge and/or quashing of the criminal proceedings is unwarranted, in the following words:

“10.....it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr.P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution / investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution / investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr.P.C., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the

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accused for which the accused is required to be tried or not”.

(14) For all the aforesaid reasons, this Court is of the view that the application of the applicants for quashing of the impugned summoning order dated 07.12.2013 passed by the Judicial Magistrate-III in case No. 1197 of 2012 under section 323, 504, 506 IPC, Police station: Gosainganj, District: Faizabad and all other consequential proceedings arising thereof is without any merits and deserves to be dismissed.

(15) As a sequel, the present application 482 Cr.P.C. is **dismissed**.

(16) However, this Court cannot be oblivious to the fact that the present application under Section 482 Cr.P.C. is pending and hanging fire since the last more than a decade before this Court and the charge-sheet had been filed in the present case way back in 2012, therefore, this Court hope and trust that the trial Court shall make an earnest endeavour to consider and decide Case No. 1197 of 2012, in accordance with law, expeditiously, preferably within a period of six months from today, without influencing any observations made in the present application. It is clarified that no unnecessary adjournment shall be granted to either of the parties.

(17) There shall be no order as to cost.

(Om Prakash Shukla, J.)

Order Date : 3rd October, 2024
Ajit