

Court No. - 27

Case :- APPLICATION U/S 482 No. - 779 of 2024

Applicant :- Maqbool Ahmed Khan

Opposite Party :- State Of U.P. Thru. Addl. Prin. Secy. Home Lko. And Another

Counsel for Applicant :- Diwakar Prasad Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Diwakar Prasad Sharma learned counsel appearing for the applicant and Sri Rishikesh Verma, learned Additional Government Advocate and perused the record.

2. By means of the instant application filed under Section 482 Cr.P.C., the applicant has sought quashing of the charge-sheet dated 09.01.2023 under Sections 406, 420, 506 IPC arising out of FIR No.306 of 2022 pending before A.C.J.M.-II, Court No.20, Lucknow as Case No.33645 of 2023.

3. In the FIR lodged on 23.10.2022, opposite party No.2 had stated that the applicant had taken Rs.10,00,000/- from her under pretext of 40% partnership in purchase and sale of a property. When the applicant stopped communicating with the complainant, she got suspicious and made inquiries, whereupon she came to know that the applicant had shown forged documents of the property to deceitfully extract Rs.10,00,000/- from the complainant. When she demanded refund of money, the applicant threatened her.

4. In the statement of the complainant recorded under Section 161 Cr.P.C., she *inter alia* stated that the applicant had deceived her by showing forged documents.

5. The learned counsel for the applicant has submitted that the parties have entered into a commercial agreement to run a property business and it was *inter alia* settled between them that after sale of the property, 40% shares of the sale proceeds will be paid to the complainant and the applicant is still ready to fulfill his commitment. He has submitted that the dispute is purely civil in nature and, therefore, the criminal proceedings are liable to be quashed. In support

of this contention, the learned counsel for the applicant has relied upon the following passages from the judgment of the Supreme Court in the case of **Indian Oil Corporation vs NEPC India LTD & Ors:** (2006) 6 SCC 736:-

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In G. Sagar Suri vs. State of UP [2000 (2) SCC 636], this Court observed :

"It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent

abuse of the process of any court or otherwise to secure the ends of justice."

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

6. Immediately, after making aforesaid observation, the Hon'ble Supreme Court proceeded to discuss the facts of the case and noted that the respondents had stated that they had no intention to cheat or dishonestly divert or misappropriate the hypothecated aircraft or any parts thereof. However, the Hon'ble Supreme Court held that "these are defences that will have to be put forth and considered during the trial. Defences that may be available, or facts/aspects when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At this stage, we are only concerned with the question whether the averments in the complaint spell out the ingredients of a criminal offence or not."

7. In the conclusion, the Hon'ble Supreme Court recorded in Indian Oil Corporation (supra) that "the High Court was not justified in quashing the complaints/criminal proceedings in entirety. The allegations in the complaint are sufficient to constitute offences under sections 415 and 425 of IPC."

8. Therefore, even in the judgment in Indian Oil Corporation (supra) relied upon by the learned counsel for the applicant, the Hon'ble Supreme Court has held that defence of the accused cannot be examined while deciding an application under Section 482 Cr.P.C. and the Hon'ble Supreme Court had allowed the appeal and set aside the order of the High Court whereby the application under Section 482 Cr.P.C. had been allowed by considering the defence set up by the accused.

9. The learned counsel for the applicant has next relied upon a judgment dated 02.01.2024 passed by this Court in **Application U/S 482 Cr.P.C. No.4821 of 2013** titled Rakesh Kumar Verma vs The State of U.P. & Anr and has submitted that this Court had quashed the criminal proceedings in a case involving identical factual background. However, a bare perusal of the order dated 02.01.2024 indicates that the Court had recorded that:

" 11. From the material placed before the Court, it appears that the complainant has not made any allegation of any demand having been made by the applicant. The complainant did not even know the applicant. He deposited some money in the applicant's bank account under instructions of a co-accused person, without intervention of the applicant.

12. In such circumstances, it cannot be said that the complainant had entrusted any amount to the applicant.

13. Moreover, there is no allegation of the applicant having deceived the complainant or to have induced or to deposit the money in his bank account. Therefore, the offence of 'cheating' as defined under Section 415 I.P.C. is also not made out against the applicant on the basis of allegations leveled in the F.I.R. or on the basis of statements recorded during investigation.

14. In view of the aforesaid facts and circumstances, when

the alleged offences are not made out against the applicant on the basis of allegations levelled in the F.I.R. or on the basis of statements of witnesses recorded during investigation, this court is of the considered opinion that the the present case falls under Categories (1) & (2) mentioned in the case of Bhajan Lal (supra) and the applicant cannot be made to face the trial of an offence which is not made out on the basis of allegations levelled in the F.I.R. and material collected during investigation. The applicant being made to face the trial for an offence which is not made out against him on the basis of prosecution case itself would result in failure of justice to the applicant."

10. In the present case, allegations leveled by the complainant in the FIR and the statement of the complainant recorded by the investigating officer clearly make out a case for trial of the applicant for commission of the alleged offences and it is not a case where the allegations leveled by the complainant itself do not make out a case for trial of the applicant.

11. The next submission of the learned counsel for the applicant is that the cognizance and the summoning order passed by the trial court does not mention the date of passing of the order.

12. Although it is true that the courts mention date of passing of the order on each and every order passed by it, non mentioning of the date on any order will be a mere irregularity and it will not make the order liable to be quashed. Date of the order can very well be ascertained by the other records of the Court such as Institution Register, Reader's Diary or Munsrim's Diary etc. Therefore, I am of the view that the irregularity committed by the Additional Chief Judicial Magistrate by not mentioning the date of the cognizance order, does not give rise to a ground for quashing of the order.

13. In Priti Saraf v. State (NCT of Delhi), (2021) 16 SCC 142, the Hon'ble Supreme Court has held that: -

"31. In the instant case, on a careful reading of the complaint/FIR/charge-sheet, in our view, it cannot be said that the complaint does not disclose the commission of an offence. The ingredients of the offences under Sections 406 and 420IPC cannot be said to be absent on the basis of the allegations in the complaint/FIR/charge-sheet. We would like to add that whether the allegations in the complaint are otherwise correct or not, has to be decided on the basis of the evidence to be led during the course of trial. Simply because there is a remedy provided for breach of contract or arbitral proceedings initiated at the instance of the appellants, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy, and the initiation of criminal proceedings, in any manner, will be an abuse of the process of the court for exercising inherent powers of the High Court under Section 482CrPC for quashing such proceedings."

14. Allegations leveled by the complainant may give rise a civil grievance also but the mere existence of a civil grievance will not give rise to a ground for quashing of the criminal proceedings in case allegations *prima facie* make out a case for commission of the cognizable offence also. Accordingly, I find no merit in the application.

15. The application is accordingly, **dismissed**.

(Subhash Vidyarthi, J.)

Order Date :- 30.1.2024
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