

Court No. - 27

Case :- APPLICATION U/S 482 No. - 814 of 2024

Applicant :- Nand Lal And 2 Others

Opposite Party :- State Of U.P. Thru. Home Deptt. Lucknow And Another

Counsel for Applicant :- Shailesh Sachan, Gaurav Singh, Piyush Agnihotri, Sachin Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Shailesh Sachan, the learned counsel for the applicants and Sri Anurag Verma, the learned A.G.A. for the State and perused the record.

2. Present petition under Section 482 Cr.P.C. has been filed seeking quashing of the Criminal Case No.1615 of 2020 pending before the learned Chief Judicial Magistrate, Custom (Special), Lucknow in Case Crime No.0364 of 2016 under Sections 406 and 506 IPC against applicants No.1 and 2 and under Sections 406, 420, 506, 467, 468, 471 IPC against applicant No.3, Police Station Banthara, Lucknow.

3. The learned counsel for the applicants has submitted that the applicants are innocent and they have been falsely implicated. Learned counsel for the applicants has further submitted that the dispute between the parties is purely of civil nature and he has relied on the judgment of the Hon'ble Supreme Court in the cases of **Sachin Garg vs State of U.P. & Ors**: Special Leave to Appeal (Criminal) No.4415 of 2023 and **Priti Saraf v. State (NCT of Delhi)**, (2021) 16 SCC 142.

4. Learned A.G.A. has opposed the aforesaid submissions and has submitted that the allegations leveled in the FIR clearly disclose commission of cognizable offence by the accused persons. He has further submitted that while exercising the powers under Section 482 Cr.P.C., the Court is not required to conduct a mini trial as held by the Hon'ble Supreme Court in **C.B.I. v. Aryan Singh**, 2023 SCC Online SC 379.

5.. In Priti Saraf (supra), the Hon'ble Supreme Court has held that: -

"31. 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."

6. In Sachin Garg (supra) cited by the learned counsel for the applicants, the Hon'ble Supreme Court relied upon the precedents on the scope of Section 482 Cr.P.C. including the judgments in the cases of **State of Haryana & Ors vs Bhajan Lal & Ors : 1992 SCC(Cr.) 426** and **Neeharika Infrastructure Pvt Ltd vs State of Maharashtra & Ors : (2021) 19 SCC 401**.

7. In Bhajal Lal (supra), it has been stated by way of illustration that proceedings can be quashed under Section 482 Cr.P.C. in the following circumstances:-

"102.(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 F.I.R. 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 F.I.R. 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 or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide 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."

8. In *Neeharika Infrastructure* (supra), referring to an earlier judgment in the case of **R.P. Kapur vs State of Punjab** : AIR 1960 SC 866,

following principles were laid down regarding the scope of quashing of the proceedings:-

"10.1 The first case on the point which is required to be noticed is the decision of this Court in the case of R.P. Kapur (supra). While dealing with the inherent powers of the High Court under Section 561-A of the earlier Code (which is pari materia with Section 482 of the Code), it is observed and held that the inherent powers of the High Court under Section 561 of the earlier Code cannot be exercised in regard to the matters specifically covered by the other provisions of the Code; the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice; ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. After observing this, thereafter this Court then carved out some exceptions to the above-stated rule, which are as under:

“(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

(ii) Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not

constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not.

(iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561- A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the

accused would not be sustained.””

9. When I examine the facts of the present case in the light of the law laid down by the Hon'ble Supreme Court in the aforesaid cases relied on by the learned counsel for the applicants, the complainant alleged that she was a 65 years old issueless and uneducated widow. Applicant No.1 is son-in-law of her sister and he took her to his home under pretext of taking her care. Applicant No.1 conspired and allured the complainant for purchasing a plot and getting the house constructed thereon and the complainant sold away her property and agreed to purchase a plot and get a house constructed through applicant No.1-Nandlal but the accused persons got the sale deed executed in the name of applicant No.3 in place of the complainant. Applicant No.3 withdrew various amounts from the bank account of the complainant but thereafter the accused persons started harassing the complainant and later on she came to know that they had fraudulently purchased the land in the name of applicant No.3. When the complainant demanded transfer of the property in her name in the garb of executing a transfer deed, the accused persons got a will executed.

10. The aforesaid allegations clearly make out a case for trial of the applicants for commission of aforesaid offences. As has been held by the Hon'ble Supreme court in **C.B.I. v. Aryan Singh**, 2023 SCC Online SC 379 that while exercising the powers under Section 482 Cr.P.C., the Court is not required to conduct a mini trial. It does not require the prosecution/investigating agency to prove the allegations. While exercising the powers under Section 482 of the CrPC the Court has very limited jurisdiction and is required to consider "whether any sufficient material available to proceed further against the accused for which the accused is required to be tried or not". Therefore, I find that there is no ground for quashing of the criminal proceedings. The application lacks merit.

11. Accordingly, the instant application is **disposed of** by observing

that in case the applicants appear and file an application for their release on bail, the same shall be considered and decided expeditiously in accordance with law, including the law laid down by the Hon'ble Supreme Court in **Satender Kumar Antil v. C.B.I.**, (2021) 10 SCC 773.

Order Date :- 1.2.2024
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