

A.F.R.

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
SITTING AT LUCKNOW

Neutral Citation No. - 2024:AHC-LKO:7373

RESERVED

Judgment reserved on 18.01.2024
Judgment delivered on 25.01.2024

Court No. - 27

Case :- APPLICATION U/S 482 No. - 776 of 1987

Applicant :- Suresh Chandra Rastogi

Opposite Party :- State of U.P.

**Counsel for Applicant :- Daya Shanker Mishra, Karuna Shanker
Rastogi, Ram Kishor**

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Karuna Shankar Rastogi Advocate, the learned counsel for the applicant and Sri Shaunak Singh, the learned AGA-I for the State.
2. By means of the instant application filed under Section 482 Cr.P.C. the applicant has sought quashing of the order dated 24.12.1985 passed by the learned Chief Judicial Magistrate, Lakhimpur Kheri in a complaint filed under Section 193/211 IPC, which has been registered as a Criminal Case No.1191 of 1987: State Vs. Suresh Chandra Rastogi as well as the order dated 12.01.1987, passed by the aforesaid Court whereby charges have been framed against the applicant.
3. Briefly stated, facts of the case are that the applicant had filed an FIR bearing Case No. 86 of 1980 under Sections 380 and 411 IPC, Police Station Muhammadi, District Lakhimpur Kheri on 07.03.1980 stating that Ishtiyag Ali and Hamid were keeping potatoes for storage in a room of the applicant. There was a wooden almirah in the wall of the room, in which some jewelery was kept. The applicant had gone to his shop in a haste while leaving the almirah unlocked and when he checked the almirah after coming back, the jewelery was not there and

Ishtiyaq and Hanif had gone away. The applicant had expressed a suspicion that aforesaid persons had stolen his jewelery. Some jewelery is said to have been recovered from named accused persons, Ishtiyaq and Hanif and another article was recovered from one Imtiyaz, who was also made an accused.

4. After investigation, a charge-sheet was submitted. Trial court took cognizance of the case and registered a Case No.196 of 1983, which was decided by means of a judgment and order dated 23.03.1985 passed by the learned Munsif Magistrate, Mohammadi, Lakhimpur Kheri, acquitting all the three accused persons of the charges. It was observed in the judgment that it appears that the applicant had concocted the story in connivance with the police persons and a case was set up against the accused persons by showing fake recovery, which could not be proved in the trial.
5. On 23.10.1985 the aforesaid three persons filed an application under Section 340/195 Cr.P.C. stating that from the observations made by the trial court while acquitting them, it is manifest that the applicant has committed offences under Sections 193, 195, 211 IPC and he should be punished for the same.
6. The aforesaid application was allowed by means of an order dated 07.11.1985 passed by the Munsif Magistrate, Mohammadi and a complaint was ordered to be filed against the application under Section 193(2) IPC. Accordingly, the Munsif Magistrate, Mohammadi filed a complaint under Section 195/340 Cr.P.C. for prosecution of the applicant under Section 193/211 IPC. The complaint has been registered as Criminal Case No.1191 of 1987
7. The applicant filed his objection dated 15.05.1986 against the complaint. However, the learned Judicial Magistrate Mohammadi, Kheri passed an order dated 19.12.1987 framing charges against the applicant and ordered him to face trial.
8. The applicant has filed the application under Section 482 Cr.P.C. on 27.11.1987 and on the same day, this Court had passed an interim

order staying the proceedings of Criminal Case No.1191 of 1987 pending in the Court of Chief Judicial Magistrate, Lahimpur Kheri.

9. Although the application remained pending for more than 36 years, and the proceedings of the complaint are lying stayed since then, a counter affidavit was filed by the State only on 14.03.2023, which is formal in nature. The applicant has filed a rejoinder affidavit.
10. The learned counsel for the applicant Sri. Karuna Shankar Rastogi has submitted that the FIR in question was lodged in the year 1980, judgment of acquittal was passed on 23.03.1985 while the applicant was merely 28 years of age. The order to file a complaint was passed on 07.11.1985 and the charges were framed on 12.01.1987. Proceedings of the complaint are lying stayed since 27.11.1987 and presently the applicant has attained 72 years of age. Relying upon the judgments in the cases of **Vakil Prasad Singh v. State of Bihar**, (2009) 3 SCC 355, the learned Counsel for the applicant has submitted that the delay in disposal of the proceedings violates the applicant's fundamental right to life and liberty guaranteed under Article 21 of the Constitution of India.
11. The learned counsel for the applicant has next submitted that the applicant had lodged the FIR merely stating that he suspected that the accused persons had committed a theft in his house and during investigation some stolen articles were recovered from the accused persons. However, trial court disbelieved the prosecution version, acquitted the accused persons and observed that the applicant had concocted the story in connivance with the police persons. The learned Counsel for the applicant has submitted that in the entire judgment of the trial Court, there is no mention of any statement given by the applicant, which may amount of commission of offence by the applicant and that the applicant has been made the sole accused on the ground that he had acted in connivance with the police persons but there is no charge of criminal conspiracy between the applicant and the police persons and witnesses.

12. *Per contra*, Sri. Shaunak Singh, the learned A.G.A.-I has opposed the application and he has submitted that it is apparent from the findings recorded by the trial Court in the judgment dated 23.03.1985, that the applicant had made false allegations against the persons accused in that case and, therefore, he is liable to be prosecuted for the offences under Section 193/211 IPC.
13. I have perused the record and considered the submissions advanced by the learned Counsel for the parties.
14. The applicant had lodged the FIR in question in the year 1980 when the applicant was merely 28 years of age. The trial Court had acquitted the accused vide judgment passed on 23.03.1985. The trial Court had passed an order for filing a complaint under Section 340 Cr.P.C. on 07.11.1985. Thereafter the complaint was filed and the charges were framed on 12.01.1987. Proceedings of the complaint were stayed by this Court on 27.11.1987, the State filed a counter affidavit only on 14.03.2023 and presently the applicant has attained 72 years of age.
15. In **Vakil Prasad Singh** (2009) 3 SCC 355, after considering the precedents on the point, it was held that: -

“24. It is, therefore, well settled that the right to speedy trial in all criminal persecutions (sic prosecutions) is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case.

25. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of

proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time-frame for conclusion of trial.”

16. Therefore, although the entire facts and circumstances of the case have to be taken into consideration, the factum of delay in conclusion of trial weighs heavily in favour of the applicant.
17. The applicant had lodged the FIR on 07.03.1980 stating that he suspected that the accused persons had committed a theft in his house. During investigation, Sub-Inspector Dwarika Prasad Mishra and Deep Singh had made recovery of stolen articles from Hanif on 08.03.1980 in presence of witnesses Ramdeen and Krishnadeen. A gold chain, a ring and a nose ring are said to have been recovered by the S.O. Gyan Chandra from the accused Imtiyaz on 05.06.1980 in the presence of witnesses, Ramesh Chandra and Chhotey Lal.
18. However, the trial court disbelieved the prosecution version by observing that the applicant had stated in his statement that he had a double storied house, he lived on the upper floor and potatoes were being stored in a room on the ground floor in which some useless household items are kept. It does not appear to be natural that jewelery was kept in such a place. The trial court further held that the applicant or any other witness had not seen the accused Ishtiyaz committing theft and no evidence was adduced against him and he deserved to be acquitted. So far as other accused persons, Hanif and Imtiyaz are concerned, the trial Court held that although Sub-Inspector Dwarika Prasad Mishra and Deep Singh had made recovery of stolen articles from Hanif on 08.03.1980 in presence of witnesses Ramdeen and Krishnadeen and a gold chain, a ring and a nose ring are said to have been recovered by the S.O. Gyan Chandra from the accused Imtiyaz on 05.06.1980 in the presence of witnesses, Ramesh Chandra and Chhotey Lal, as no person had seen the aforesaid accused persons committing the theft they could not be convicted for the offence under Section 380 IPC.

19. The complaint filed by Munsif Magistrate, Mohammadi merely reproduces the contents of the FIR that the applicant had suspected that the accused persons-Ishtiyak and Hanif had stolen some jewelery from his house and thereafter observed that while acquitting the accused persons, the trial court had held that the applicant had lodged a false report and showed a fake recovery in connivance with the police persons and that the applicant gave a false statement on oath.

20. The offence of giving false evidence is defined in Section 191 I.P.C. as follows: -

“191. Giving false evidence.—Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.”

21. Section 195 (1) (b) (i) of Cr.P.C. provides that no Court shall take cognizance of any offence punishable under any of the following sections of the Penal Code, 1860 (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, except on the complaint in writing of that Court, or by such officer of the Court as that Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate.

22. Section 211 I.P.C. provides as follows: -

***“211. False charge of offence made with intent to injure.—Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;
and if such criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment***

for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

23. The applicant had merely expressed a suspicion that the accused persons had committed theft in his house and the suspicion was fortified by the recovery of stolen articles made by the police officers in presence of independent witnesses. There is nothing on record to establish that the applicant had falsely charged the accused persons with intent to cause injury to the accused persons and that the applicant knew that there was no just or lawful ground for lodging the F.I.R. against the accused persons.
24. Section 340 Cr.P.C. provides that "When upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, make a complaint thereof in writing".
25. Thus from the above, it follows that there are two conditions, on fulfillment of which a complaint can be filed against a person who has given a false affidavit or evidence in a proceeding before a court. The first condition being that a person has given a false affidavit in a proceeding before the court and, secondly, in the opinion of the court it is expedient in the interest of justice to make an inquiry against such a person in relation to the offence committed by him.
26. For initiating proceedings under Section 340 Cr.P.C., the person should have consciously made a deliberate statement, which is found to be false on the basis of unimpeachable evidence. Further, the court concerned has to consider whether it would be expedient in the interest of justice to sanction such prosecution. The court has to see

whether there is evidence in support of the allegation to justify the initiation of proceedings against the applicant. The court should be satisfied that there is reasonable foundation for the charge.

27. In **Iqbal Singh Marwah v. Meenakshi Marwah**, (2005) 4 SCC 370, the Hon'ble Supreme Court had held that: -

“23. In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the section is conditioned by the words “court is of opinion that it is expedient in the interests of justice”. This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b). This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint.”

28. In the F.I.R., the applicant had merely expressed a suspicion that the two named accused persons had committed a theft in his house and he had not made a categorical assertion against the accused persons. The complaint does not refer to any other statement made by the applicant on oath, alleging commission of the offence by the accused persons. Therefore, there is no material to establish that the applicant had given any statement on oath, which has been found to be false.

29. The police claimed to have recovered the stolen articles from the accused persons and the recoveries had been witnessed by some independent persons. The trial Court disbelieved the recovery made by police and witnessed by independent persons, but the police persons who had made the recovery or the persons who had witnessed the recovery, have not been made accused in the complaint. The applicant had been made the sole accused on the ground that he had acted in connivance with the police persons but there is no charge of criminal conspiracy between the applicant and the police persons and witnesses.
30. In the aforesaid circumstances, I am of the considered view that the mere expression of a suspicion of commission of theft by the accused persons does not amount to commit an offence by the applicant. The other evidence, which has been disbelieved by the trial court, was not of the applicant and the persons who had given the evidence have not been made an accused. Therefore, there is no material warranting prosecution of the applicant for offences under Section 193/211 I.P.C. The learned Chief Judicial Magistrate, Lakhimpur Kheri appears to have committed a patent error in framing charges against the applicant and directing him to face trial for the charges.
31. Accordingly, the present application under Section 482 Cr.P.C. is **allowed**. The impugned order dated 24.12.1985, passed by the learned Chief Judicial Magistrate, Lakhimpur Kheri in Criminal Case No.1191 of 1987 as well as the order dated 12.01.1987, passed in the aforesaid case whereby charges have been framed against the applicant, are hereby quashed.

(Subhash Vidyarthi, J.)

Order Date: 25.01.2024

Ram.