

Court No. - 27

Case :- APPLICATION U/S 482 No. - 1053 of 2024

Applicant :- Ambika Singh Paliwal @ Ambika Singh

Opposite Party :- State Of U.P. Thru. Prin.Secy. Deptt.Of
Homes And Another

Counsel for Applicant :- Shashank Singh

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Shashank Singh, the learned counsel for the applicant, Sri Anurag Verma, the learned A.G.A.-I appearing on behalf of the State and perused the records.

2. By means of the instant application filed under Section 482 Cr.P.C. the applicant has sought the entire proceedings including the charge sheet no.02 of 2023, dated 03.03.2023 and summoning order dated 05.01.2024 in Criminal Case bearing No.911 of 2024 and Registration no.3011 of 2024: State Vs. Ambika Singh Paliwal, under Sections 323, 504, 506, I.P.C. Police Station Gomti Nagar, District Lucknow East (Commissionerate Lucknow), pending in the Court of learned Chief Judicial Magistrate, Lucknow.

3. The opposite party no.2 had lodged an F.I.R. on 08.03.2019 alleging that when some children were playing cricket in an open plot of land, because of a dispute starting due to the ball going towards the house of the applicant, the applicant pushed the complainant's son Anurag Kumar Dwivedi, causing injuries to him and he threatened him with his licensed revolver.

4. The medico legal examination report of Anurag Kumar Dwivedi mentions a contused swelling on right forearm and an

abrasion on left leg besides complaint of pain over backside of head. The injuries were opined to be simple in nature caused by a hard and blunt object and friction and the period of injuries was opined to be about one day.

5. During investigation, the complainant and the victim supported the F.I.R. allegations by their statements.

6. The Investigating Officer submitted a charge sheet dated 03.03.2023 for the commission of offence under Section 323, 504, 506 I.P.C. The learned trial court passed an order stating that it had perused the charge sheet and taken cognizance of the offence.

7. A copy of the summoning order dated 05.01.2024 has been annexed with the affidavit, wherein the learned trial court has recorded that it has perused the case diary and the documents submitted before the court and there were sufficient grounds to take cognizance of the offence under Sections 323, 504, 506 I.P.C. Accordingly, the cognizance of the offence was taken and the applicant was summoned to face trial.

8. The learned counsel for the applicant has submitted that summoning order is a non-speaking order, which is unsustainable in law. The learned counsel for the applicant has relied upon a decision of Hon'ble Supreme Court in the case of ***S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and another: 2005 (8) SCC 89***. This was a reference made by two Judges Bench for determination of following questions of law:

"(a) Whether for purposes of Section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfil the requirements of the said section and it is not necessary to specifically state in the complaint that the person accused was in charge of, or responsible for, the conduct of the business of the company.

(b) Whether a director of a company would be deemed to be in charge of, and responsible to, the company for conduct of the business of the company and, therefore, deemed to be guilty of the offence unless he proves to the contrary.

(c) Even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the managing directors or joint managing director who admittedly would be in charge of the company and responsible to the company for conduct of its business could be proceeded against."

9. A bare perusal of the questions referred indicate that the aforesaid proceedings arose out of a complaint under the Negotiable Instruments Act, whereas the present case has emanated out of an F.I.R. lodged under Sections 323, 504, 506, I.P.C. in furtherance whereof the investigation has already been carried out and a charge sheet has already been submitted. Therefore, the questions decided by Hon'ble Supreme Court are not relevant for decision of the present case.

10. The learned counsel for the applicant has next relied upon a decision rendered by a Coordinate Bench of this Court in the case of ***Hariram Verma and 4 others Vs. State of U.P. & anr: Application U/s 482 No.8041 of 2015***. That case also arose out of an application under Section 156 (3) Cr.P.C. which was treated to be a complaint. That case also does not arise out of an F.I.R. and no investigation by the police had been conducted in that case also. Therefore, both the cases relied upon by the learned counsel for the applicant are not relevant to the present case which arose out of an F.I.R. after registration of which investigation had been conducted by the police and commission of offence has been establish during investigation.

11. The Honble Supreme Court in the case of ***State of Gujarat Vs. Afroz Mohammed Hasanfatta: (2019) 20 SCC 539*** has

held as follows:

19. Section 190(1)(a) Cr.P.C. provides for cognizance of complaint. Section 190(1)(b) Cr.P.C. deals with taking cognizance of any offence on the basis of police report under Section 173(2) Cr.P.C. Complaint is defined in Section 2(d) Cr.P.C. which reads as under:-

“2. Definitions.

.....

(d) “complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.” The procedure for taking cognizance upon complaint has been provided under Chapter XV – Complaints to Magistrates under Sections 200 to 203 Cr.P.C. A complaint filed before the Magistrate may be dismissed under Section 203 Cr.P.C. if the Magistrate is of the opinion that there is no sufficient ground for proceeding and in every such case, he shall briefly record his reasons for so doing. If a complaint is not dismissed under Section 203 Cr.P.C., the Magistrate issues process under Section 204 Cr.P.C. Section 204 Cr.P.C. is in a separate chapter i.e. Chapter XVI – Commencement of Proceedings before Magistrates. A combined reading of Section 203 and Section 204 Cr.P.C. shows that for dismissal of a complaint, reasons should be recorded. The procedure for trial of warrant cases is provided in Chapter XIX – Trial of Warrant Cases by the Magistrates. Chapter XIX deals with two types of cases – A – Cases instituted on a police report and B – Cases instituted otherwise than on police report. In the present case, cognizance has been taken on the basis of police report.

20. In a case instituted on a police report, in warrant cases, under Section 239 Cr.P.C., upon considering the police report and the documents filed along with it under Section 173 Cr.P.C., the Magistrate after affording opportunity of hearing to both the accused and the prosecution, shall discharge the accused, if the Magistrate considers the charge against the accused to be groundless and record his reasons for so doing. Then comes Chapter XIX-C – Conclusion of trial - the

Magistrate to rendering final judgment under Section 248 Cr.P.C. considering the various provisions and pointing out three stages of the case. Observing that there is no requirement of recording reasons for issuance of process under Section 204 Cr.P.C., in Raj Kumar Agarwal v. State of U.P. and another 1999 Cr.LJ 4101, Justice B.K. Rathi, the learned Single Judge of the Allahabad High Court held as under:-

“.....As such there are three stages of a case. The first is under Section 204 Cr. P.C. at the time of issue of process, the second is under Section 239 Cr. P.C. before framing of the charge and the third is after recording the entire evidence of the prosecution and the defence. The question is whether the Magistrate is required to scrutinise the evidence at all the three stages and record reasons of his satisfaction. If this view is taken, it will make speedy disposal a dream. In my opinion the consideration of merits and evidence at all the three stages is different. At the stage of issue of process under Section 204 Cr. P.C. detailed enquiry regarding the merit and demerit of the cases is not required. The fact that after investigation of the case, the police has submitted the charge sheet, may be considered as sufficient ground for proceeding at the stage of issue of process under Section 204 Cr. PC., however subject to the condition that at this stage the Magistrate should examine whether the complaint is barred under any law,..... At the stage of Section 204 Cr. P.C. if the complaint is not found barred under any law, the evidence is not required to be considered nor the reasons are required to be recorded. At the stage of charge under Section 239 or 240 Cr. P.C. the evidence may be considered very briefly, though at that stage also, the Magistrate is not required to meticulously examine and to evaluate the evidence and to record detailed reasons.

8. A bare reading of Sections 203 and 204 Cr.P.C. shows that Section 203 Cr.P.C. requires that reasons should be recorded for the dismissal of the complaint. Contrary to it, there is no such' requirement under Section 204 Cr.P.C. Therefore, the order for issue of process in this case without recording reasons, does not suffer from any illegality.” [underlining added] We fully endorse the above view taken by the learned Judge.

21. In para (21) of Mehmood Ali Rehman, this Court has made

a fine distinction between taking cognizance based upon charge sheet filed by the police under Section 190(1)(b) Cr.P.C. and a private complaint under Section 190(1)(a) Cr.P.C. and held as under:-

“21. Under Section 190(1)(b) CrPC, the Magistrate has the advantage of a police report and under Section 190(1)(c) CrPC, he has the information or knowledge of commission of an offence. But under Section 190(1)(a) CrPC, he has only a complaint before him. The Code hence specifies that “a complaint of facts which constitute such offence”. Therefore, if the complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance under Section 190(1)(a) CrPC. The complaint is simply to be rejected.”

22. In summoning the accused, it is not necessary for the Magistrate to examine the merits and demerits of the case and whether the materials collected is adequate for supporting the conviction. The court is not required to evaluate the evidence and its merits. The standard to be adopted for summoning the accused under Section 204 Cr.P.C. is not the same at the time of framing the charge. For issuance of summons under Section 204 Cr.P.C., the expression used is “there is sufficient ground for proceeding.....”; whereas for framing the charges, the expression used in Sections 240 and 246 IPC is “ there is ground for presuming that the accused has committed an offence..... ”. At the stage of taking cognizance of the offence based upon a police report and for issuance of summons under Section 204 Cr.P.C., detailed enquiry regarding the merits and demerits of the case is not required. The fact that after investigation of the case, the police has filed charge sheet along with the materials thereon may be considered as sufficient ground for proceeding for issuance of summons under Section 204 Cr.P.C.

23. In so far as taking cognizance based on the police report, the Magistrate has the advantage of the charge sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating Officer/SHO collects the necessary evidence during the investigation conducted in compliance with the provisions of the Criminal Procedure Code and in accordance with the rules of investigation. Evidence and

materials so collected are sifted at the level of the Investigating Officer and thereafter, charge sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge sheet. The court thus has the advantage of the police report along with the materials placed before it by the police. Under Section 190 (1)(b) Cr.P.C., where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. In case of taking cognizance of an offence based upon the police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused. Such an order of issuing summons to the accused is based upon subject to satisfaction of the Magistrate considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate is not required to record any reason. In case, if the charge sheet is barred by law or where there is lack of jurisdiction or when the charge sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge sheet and for not taking on file."

12. In the present case, the opposite party no.2 had lodged F.I.R. The police has carried out investigation and submitted a charge sheet. The Magistrate has perused the charge sheet and the material placed along with it and has recorded that there was sufficient material to take cognizance of the offence and summon the accused person. Keeping in view the law laid down by the Hon'ble Supreme Court in the case of **Afroz Mohammed Hasanfatta (supra)**, nothing further was required to be done by the Magistrate, at this stage, as the order cannot be assailed on the ground of it being a non-speaking order.

13. The learned counsel for the applicant next submitted that the allegations levelled by the opposite party no.2 in the F.I.r. are false. A minor dispute had taken place because of some children

playing cricket and the younger brother of the injured has not supported the F.I.R. allegations. A perusal of the statement of the victim's younger brother Tanmay Dwivedi indicates that when he had gone with his elder brother to take back the ball, the applicant had abused and pushed the victim and had shown him a revolver. The applicant's daughter intervened and the applicant threatened that he has got a licensed revolver and he is not afraid of any person. The aforesaid statement of Tanmay Dwivedi also does not make out a case for quashing of the proceedings against the applicant and he too has stated that the applicant had threatened, abused and pushed the victim.

14. The Hon'ble Supreme Court in ***C.B.I. v. Aryan Singh, 2023 SCC Online SC 379*** has held 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*".

15. While deciding an application under Section 482 Cr.P.C. this court cannot conduct a detailed scrutiny of the evidence collected during investigation. The Investigating Officer found the charges to be established and submitted a charge sheet. The learned trial court taking cognizance of the offence has summoned the applicant to face trial. It is for the parties to lead their evidence in support of their respective case during trial.

16. The application lacks merit and the same is accordingly **dismissed**. However, in case the applicant appears and file an application for his 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.***

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(Subhash Vidyarthi, J.)

Order Date :- 12.2.2024

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