

High Court of Judicature at Allahabad
Sitting at Lucknow

Neutral Citation No. - 2024:AHC-LKO:20507

Reserved

Judgment reserved on :29.02.2024
Judgment Pronounced on : 06.03.2024

Court No. - 27

Case :- APPLICATION U/S 482 No. - 1857 of 2024

Applicant :- Umesh Pratap Singh Alias Pappu And 4 Others

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

Counsel for Applicant :- Ajeet Pratap Singh, Gautam Singh Yadav, Zia Ul
Qayum

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Ajeet Pratap Singh, the learned counsel for the applicants and Sri Akhilesh Kumar Vyas, the learned A.G.A appearing on behalf of the State and perused the record.

2. By means of the instant application filed under Section 482 Cr.P.C., the applicants have sought quashing of judgment and order dated 19.01.2024 passed by the learned Court of Session Judge, Hardoi in Criminal Revision No. 169/2023 (Umesh Pratap Singh and 4 others Vs. State of U.P. and another) as well as the summoning order dated 16.03.2022 passed by the learned Judicial Magistrate, Court No. 1, Hardoi in Criminal Case No. 28007/2002 (Ajeet Singh Vs Umesh Pratap Singh and others) for taking cognizance of the offences and summoned the applicants to face the trial for offences under Section 452, 504 I.P.C.

3. The opposite party no.2 had filed a complaint number 28007 of 2022 in the court of Judicial Magistrate, Court No. 1, Hardoi, alleging that when he was sitting in front of his house along with his parents at about 9:30 AM on 03.11.2022, all the accused persons came there due to

an old animosity. The applicant no.1 was carrying a licensed revolver and applicant no.2 was carrying a licensed rifle. The applicants started abusing the complainant and upon being objected, they become bent upon beating the complainant. When the complainant went inside his house to save himself, all the applicants entered his house and started beating him with kicks, fists and sticks. When the complainant's parents tried to save him, they were also beaten up causing injuries to them. The accused persons snatched away a gold chain from the complainant's neck. When Chandrapal, Ajay Pratap Singh and some other neighbors came there, hearing the hue and cry raised by the complainant and his parents, the accused persons went away while threatening the complainant.

4. In the statement of the complainant recorded under section 200 Cr.P.C., he supported the complaint allegations and further stated that because of an old animosity between the parties, altercations used to take place between the parties day in and day out. Witnesses Ajay Pratap Singh and Chandrapal got their statements recorded under section 202 Cr.P.C. and both of them supported the complaint allegations.

5. On 16.03.2022, the Judicial Magistrate, Court No. 1, Hardoi passed the order stating that after perusal of the complaint, statement of the complainant recorded under section 200 Cr.P.C. and statements of the witnesses recorded under section 202, Cr.P.C., prima facie it appeared that the accused persons had committed offences under section 452, 504 I.P.C and summoned them to face trial for the aforesaid offences.

6. The applicants filed Criminal Revision No. 169 of 2023 challenging the aforesaid order dated 16.03.2022 passed by the Judicial Magistrate, Court No. 1, Hardoi, wherein it was stated that on 05.11.2022, some dispute had taken place between the parties regarding ploughing a field, due to which reason, F.I.R Nos. 473 of 2022, and 474 of 2022 were lodged in the police station by both the parties against each other. The complainant has filed a false complaint without bringing the

aforesaid F.I.Rs to the knowledge of the Magistrate. There is some discrepancy in the date of the incident mentioned in the complaint filed in the court and in the complaint sent to the Superintendent of Police.

7. The learned Session Judge, Hardoi has dismissed the revision by means of an order dated 19.01.2024, wherein it is recorded that the learned trial court has summoned the applicants on the basis of statements that were adduced before it. The fact of registration of F.I.Rs dated 05.01.2023 lodged by both the sides, was not available on the records of the proceedings before the trial court at the time of opposing of the summoning order. It was open to the applicants to appear before the trial court and apprise the court about the correct facts and the trial court is empowered to pass proper orders after taking into consideration all the facts. As the defense of the applicants was not available before the trial court, the trial court had not committed any error in summoning the applicants after taking into consideration the material adduced by the complainant.

8. While assailing validity of the order dated 16.03.2022 passed by the trial court, summoning the applicants to face the trial for offences under sections 452 and 504 I.P.C and the order dated 19.01.2024 passed by the Sessions Judge, Hardoi dismissing the revision filed against the aforesaid summoning order, the learned counsel for the applicants has submitted that the trial court has committed a manifest error in summoning the applicants to face trial on the basis of a complaint filed on 16.11.2022 alleging commission of an incident on 03.11.2022, whereas in the F.I.R filed from the side of the opposite party no.2 on 05.11.2022, there was no mention of any incident that took place on 03.11.2022, which establishes that the allegations levelled in the complaint are false. He has further submitted that the revisional court has dismissed the revision in a cursory manner without appropriately dealing with the grounds taken by the applicants. Relying upon a decision of the Hon'ble Supreme Court in **Paul George Vs. State; 2002 2 SCC 406**, he

submitted that a revision under section 397 Cr.P.C should be decided by a speaking order by giving reasons.

9. Regarding the scope of scrutiny to be made by this court while deciding the application under Section 482 Cr.P.C, the learned counsel the applicants has placed reliance on a decision of the Hon'ble Supreme Court in **Salib alias Shalu alias Salim Vs. State of UP and others, 2024 SCC OnLine SC 947** wherein it was held that:-

"...Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple

FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged."

10. Salib (Supra) relied upon by the learned counsel for the applicant, refers to the decision of the Hon'ble Supreme Court in statement in **State of Haryana Vs. Bhajan Lal, 1992 Supp (1) SCC 335**, wherein the Hon'ble Supreme Court had held that:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 FIR 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 FIR 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 mala fide 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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

11. A charge-sheet or a summoning order or the proceedings passed thereon can be quashed, if one of the conditions mentioned above are fulfilled. The conditions relevant for the present case are condition no.1 and 3, which permit an inquiry as to whether the allegations made in the F.I.R or the complaint and the material submitted in respect of the same, do not disclose the commission of any offence.

12. **Section 190(1) Cr.P.C** provides as follows:-

"Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence -

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer or upon his own knowledge, that such offence has been committed."

13. For taking cognizance of an offence under section 190(1) Cr.P.C, the Magistrate has to be satisfied that the complaint of facts filed by the complainant constitutes the offence alleged. For taking cognizance of the offence, the Magistrate is only required to examine the facts as alleged in the complaint and not to examine the correctness of the facts.

14. Section 200 Cr.P.C, which provides for issue of process, if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, the Magistrate may issue a summons/warrant.

15. In **State Of Gujarat vs Afroz Mohmed Hasanfatta; 2019 20 SCC 539**, the Hon'ble Supreme Court held that:-

"For issuance of process against the accused, it has to be seen only whether there is sufficient ground for proceeding against the accused. At the stage of issuance of process, the Court is not required to weigh the evidentiary value of the materials on record.

18. 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. (a)...(c) ****

(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 13 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.

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 16 that the accused has committed an offence.....".

39. For issuance of process against the accused, it has to be seen only whether there is sufficient ground for proceeding against the accused. At the stage of issuance of process, the Court is not required to weigh the evidentiary value of the materials on record. The Court must apply its mind to the allegations in the charge sheet and the evidence produced and satisfy itself that there is

sufficient ground to proceed against the accused. The Court is not to examine the merits and demerits of the case and not to determine the adequacy of the evidence for holding the accused guilty. The Court is also not required to embark upon the possible defences. Likewise, 'possible defences' need not be taken into consideration at the time of issuing process unless there is an ex facie defence such as a legal bar or if in law the accused is not liable. "

16. Therefore, the trial court was merely required to see as to whether a case for trial of the applicants was made out on the basis of averments made in the complaint and the statement of the complainant recorded under section 200 Cr.P.C and that of the witnesses recorded the section 202 Cr.P.C. The trial court has taken into consideration the aforesaid material and has come to a conclusion that on the basis of perusal thereof, a case for trial of the applicants for the alleged offences is made out and has summoned the applicants accordingly.

17. In revision, the applicants had assailed the order passed by the trial court on the ground that the complainant had filed the complaint on the basis of false allegations and he had concealed the fact of filing of F.I.Rs No. 473 of 2022 and 474 of 2022 from both the sides, and that there is some discrepancy in the date of the incident mentioned in the complaint filed in the court and in the complaint sent to the Superintendent of Police.

18. The revisional court has rightly held that the trial court has not committed any error and any illegality in not taking into consideration the material, which was not available before it and that it is for the applicants to appear before the trial court and place the relevant material in their defense. In these circumstances, the judgment and order passed by the revisional court is a well reasoned order and it cannot be said to be vitiated for want of disclosure of reasons or non application of mind.

19. In view of the aforesaid discussions, I am of the view that the impugned order dated 16.03.2022 passed by the learned Judicial Magistrate, Court No. 1, Hardoi in Criminal Case No. 28007/2002 and the judgment and order dated 19.01.2024 passed by the learned Court of Session Judge, Hardoi in Criminal Revision No. 169/2023 do not suffer from any illegality warranting interference by this court in exercising of its inherent powers under Section 482 Cr.P.C.

20. Accordingly, the application is hereby *dismissed*.

21. However, it is observed that in case the applicants appear before the trial court and move an application for submission of personal bonds for their appearance in accordance with the provision contained in Section 88 Cr.P.C, the trial court shall consider the same in accordance with law and pass suitable orders. Thereafter, the applicants will be free to raise all the facts and reasons in their defense in accordance with law.

(Subhash Vidyarthi,J.)

Order date:-06.03.2024

Preeti.