

Court No. - 27

Case :- APPLICATION U/S 482 No. - 1993 of 2024

Applicant :- Triyoogi Nandan @ Guddu

Opposite Party :- State Of U.P Thru. Secy. Ministry Of Home Govt.
Secrt. Lko. And Another

Counsel for Applicant :- Saurabh Yadava, Hema Singh

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Saurabh Yadava, learned counsel for the applicant and Sri Anurag Verma, learned Additional Government Advocate-1.
2. By means of this application filed under Section 482 Cr.P.C. the applicant has sought quashing of proceedings of Case No. 74944 of 22021; State vs. Triyoogi Nandan @ Guddu, arising out of Case Crime No. 373 of 2019, Police Station Gajipur, District Lucknow.
3. The opposite party no.2 has lodged the FIR No. 373 of 2019, stating that in an open inquiry conducted by the vigilance establishment, it was found that one Ashok Kumar Verma, who was the then godown Incharge of paddy purchase center and the applicant had committed illegality in purchase of paddy during the year 2009-2010. The applicant used to purchase the produce/paddy from the farmers and acting in furtherance of conspiracy with the other accused Ashok Sharma, he deprived the farmers of the benefits due to them.
4. After investigation, the Investigating Officer submitted a charge sheet on 28.06.2010 stating that during investigation, it came to light that the accused persons acted under criminal conspiracy and issued fake purchase slips and the amount that was transferred to the account of farmers was withdrawn by the applicant in fraudulent manner, causing undue loss to the public exchequer. The applicant supplied

paddy purchased by him from the farmers and thus he supplied the rice in a illegal manner.

5. Learned counsel for the applicant has submitted that the allegations, *prima facie*, do not make out commission of any cognizable offence by the applicant and the present case is covered by the category of cases mentioned in para 102 (iii) of the judgment in the case of ***State of Haryana vs. Bhajan Lal, (1992) Supplement 1 SCC 335.***

6. Learned counsel for the applicant has further submitted that the Investigating Officer has recorded the statement of Branch Manager, Union Bank of India, who stated that some farmers have obtained various amount through their bank accounts and the applicant had claimed that the amount was transferred towards sale of paddy made by him and he had withdrawn the amount by coming to the bank along with the farmers. He has submitted that the aforesaid Branch Manager was not posted in the branch in question at the relevant point of time and, therefore he could not have any personal knowledge of the fact regarding which he gave the statement.

7. *Per contra*, Sri Anurag Verma, learned A.G.A-1 has vehemently opposed the application and submitted that while deciding an application under Section 482 Cr.P.C. the Court has merely though looked into the prosecution version and this Court cannot analyze the admissibility, sufficiency and relevancy of prosecution evidence. He has relied on the following passages from the judgement of Hon'ble Supreme Court in the case of **Central Bureau of Investigation (CBI) and another vs. Thommandru Hanna Vijayalakshmi alias T.H.Vijayalakshmi and another, 2021 SCC online SC 923.**

"51. From the above, it becomes evident that the Single Judge of the Telangana High Court has acted completely beyond the settled parameters which govern the power to quash an FIR. The Single Judge has donned the role of a Chartered Accountant. The Single Judge has completely ignored that the Court was not at the stage of trial or considering an appeal against a verdict in a trial. The Single Judge has enquired into the material adduced by the

respondents, compared it with the information provided by the CBI in the FIR and their counter-affidavit, and then pronounced a verdict on the merits of each individual allegation raised by the respondents largely relying upon the documents filed by them (by considering them to be 'known sources of income' within the meaning of Section 13(1)(e) of the PC Act). This exercised has been justified on account of the appellant not having conducted a Preliminary Enquiry and hence, not having addressed the respondents' PART E 52 objections relying upon the documents adduced by them. The reasons provided by the Single Judge for entering into the merits of the dispute while quashing the FIR are specious, especially so considering our finding that the CBI need not hold a Preliminary Enquiry mandatorily. While exercising its jurisdiction under Article 226 of the Constitution to adjudicate on a petition seeking the quashing of an FIR, the High Court should have only considered whether the contents of the FIR – as they stand and on their face – prima facie make out a cognizable offence. However, it is evident that in a judgment spanning a hundred and seven pages (of the paper-book in this appeal) the Single Judge has conducted a mini-trial, overlooking binding principles which govern a plea for quashing an FIR.

52. The judgment of a two Judge Bench of this Court in Gunmala Sales (P) Ltd. v. Anu Mehta⁶¹ makes it abundantly clear that the High Court does not conduct a mini-trial or a roving inquiry while exercising its powers under Section 482 of the CrPC. Justice Ranjana P Desai held: —

"34.4. No restriction can be placed on the High Court's powers under Section 482 of the Code. The High Court always uses and must use this power sparingly and with great circumspection to prevent inter alia the abuse of the process of the court. There are no fixed formulae to be followed by the High Court in this regard and the exercise of this power depends upon the facts and circumstances of each case. The High Court at that stage does not conduct a mini trial or roving inquiry, but nothing prevents it from taking unimpeachable evidence or totally acceptable circumstances into account which may lead it to conclude that no trial is necessary qua a particular Director."

53. This principle also applies squarely to the exercise of powers by a High Court under Article 226 of the Constitution while considering a writ petition for quashing an FIR. Further, in numerous judgments of this Court it has been held that a court cannot conduct a mini-trial at the stage of framing of charges⁶². Hence, doing so at the stage of considering a petition for quashing an FIR under Section 482 of the CrPC or Article 226 of the Constitution is obviously also impermissible. Therefore, we disapprove of the reasoning provided by the Telangana High Court in its impugned judgment dated 11 February 2020 for quashing the FIR".

8. In **Rajiv Kourav vs. Baisahab and others**, reported in (2020) 3 SCC 317, the Hon'ble Supreme Court has held as follows:-

"6. It is no more res integra that exercise of power under Section 482 CrPC to quash a criminal proceeding is only when an allegation made in the FIR or the charge sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of process of any Court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the Court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding".

(Emphasis supplied)

9. The legal position is settled beyond any doubt that while deciding an application under Section 482 Cr.P.C., this Court cannot go into the correctness of the allegation or relevancy, admissibility or the weight of the evidence collected by the prosecution and that is to be done by the trial court after the parties are given opportunity to lead evidence in support of their respective case.

10. This Court cannot scrutinize the statement of the witnesses, particularly statement of the Branch Manager of Union Bank of India referred to by learned counsel for the applicant and the finding regarding correctness of the allegations will be recorded by the trial court after the parties have led evidence in support of their respective case. There is no good ground for quashing the proceedings of criminal case pending against the applicant.

11. The application is disposed of by observing that in case the applicant appears and files 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.**

Order Date :- 7.3.2024

Renu/-