

Court No. - 27

Case :- APPLICATION U/S 482 No. - 2812 of 2024

Applicant :- Naanbaccha Pandey Alias Jitendra Kumar Pandey

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

Counsel for Applicant :- Harsh Vardhan Singh

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Harsh Vardhan Singh, the learned counsel appearing for the applicant and Sri Manish Kumar Pandey, the learned Additional Government Advocate and perused the record.

2. By means of the instant application filed under Section 482 Cr.P.C., the applicant has sought quashing of the proceedings of the order dated 27.09.2023 passed by the learned Additional Chief Judicial Magistrate, Court No.1, Gonda arising out of Case Crime No.67 of 2023: Criminal Case No.18746 of 2023: State vs Naanbaccha Pandey & Jitendra Kumar Pandey" under Sections 336, 353 IPC, 11 Prevention of Cruelty to Animals Act, 1960 and 2/3 Prevention of Damages to Public Property Act, 1984, Police Station Tarabganj, Gonda.

3. The FIR states that the applicant, accompanied by 30 unknown persons, chased more than 200 cow progenies towards inside Tehsil compound and locked them inside the compound. The cattle were kept without any fodder or water. The aforesaid act of the accused persons disrupted performance of the aforesaid duties in the Tehsil office and caused difficulties to the persons coming to the office for their work.

4. The investigating officer has recorded in the case diary that the complainant had stated at one stage that he wants to withdraw the complaint and, therefore, he was deferring recording of his statement but later on the complainant has

recorded his statement under Section 161 Cr.P.C. wherein he supported the FIR allegations.

5. The learned counsel for the applicant has submitted that even as per the FIR allegations and as per the statement of the complainant, no offence is made out against the applicant and as per the law laid down by the Hon'ble Supreme Court in the case of **State of Haryana v. Bhajan Lal**, 1992 Supp (1) SCC 335, criminal proceedings against the applicant deserves to be quashed.

6. Scope of interference under Section 482 Cr.P.C. was explained by the Hon'ble Supreme Court in *Bhajan Lal (supra)*, wherein the Hon'ble Supreme Court has held as follows:-

“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."

7. It would be apt to note the judgment on the issue rendered by Hon'ble Supreme Court of India in **Rajiv Thappar and others vs. Madan Lal Kapoor (2013) 3 SCC 330**. In Rajiv Thappar's case (supra), the following (relevant portion) has been held:-

*"29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. **To invoke its inherent jurisdiction under Section 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material***

produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:

30.1. Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

30.2. Step two, whether the material relied upon by the accused, would rule out the assertions contained in the

charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice"

(Emphasised by me)

30.5. If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused."

8. 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".

9. From the aforesaid facts, the law regarding scope of interference while deciding an application under Section 482 Cr.P.C. for quashing of the case, comes out to the effect that criminal proceedings can be quashed where even as per the prosecution case, no case for trial of the accused is made out. While deciding an application under Section 482 Cr.P.C., this Court cannot take into consideration the defence set up by the accused person and cannot enter into a detailed scrutiny to find out correctness of the allegations and that has to be done by the trial court after parties will lead evidence to their defence.

10. There appears to be no illegality in taking cognizance of the offence and summoning the applicant to face trial. The application lacks merit and is liable to be dismissed.

11. At this stage, the learned counsel for the applicant has insisted this Court to record findings of the submissions made by him regarding the merits of the case.

12. The learned counsel for the applicant has submitted that from a bare perusal of the site plan prepared by the investigating officer, the allegations appear to be inherently improbable as it is impossible to lock up 200 cattle in the space shown in the site plan.

13. When the Court proceeded to peruse the site plan prepared by the investigating officer, it does not contain any measurements of the premises where the alleged offence took place, therefore, this Court cannot record any finding as to whether it was possible to put in 200 cattle in that space or not.

14. The learned counsel for the applicant has next submitted that the space is not a closed space and the cattle would have an opportunity to go outside the premises through the open passage. The site plan shows a line all around the place of occurrence, which appears to be a boundary wall. It does not appear from a perusal of the site plan whether actually there was a boundary wall or whether there was any gap in the boundary wall through which the cattle could have moved outside the area, therefore, the Court does not find any force in the aforesaid submission of the learned counsel for the applicant.

15. The learned counsel for the applicant has next submitted that the investigating officer has sent a letter to the Veterinary officer on 14.02.2023 requesting him to carry out the post mortem examination of a dead cow progeny lying inside the Tehsil compound. Post mortem examination was conducted on the very same day. It is recorded in the post mortem examination report that the dead cattle was a female calf, it had died in the Tehsil compound after 15 minutes of treatment on 14.02.2023 at 11:30 AM, the general condition of the body was weak, debilitate, anemic, unable to stand up, lateral recumbency and dysuria. Cause of death has been opined to be Anemia, weakness.

16. Submission of the learned counsel for the applicant on the strength of the aforesaid the post mortem report is that the animal died on 14.02.2023 whereas the FIR has been lodged on 13.02.2023. The applicant has not been charged for commission of the offence of U.P. Prevention of Cow Slaughters Act. He has merely been charged for offence under Section 11 of the U.P. Prevention to Cruelty against the Animals Act. The investigating officer has recorded statement of the Veterinary doctor, who had examined the injured cattle and had conducted the post mortem examination of the dead

cattle and he stated that the cow progeny had died due to anemia and weakness. Other two cattle were sick and they recovered after treatment.

17. Section 11 of The Prevention Of Cruelty To Animals Act, 1960 as follows:-

"11. Treating animals cruelly.—

(1)If any person—

(a)beats, kicks, over-rides, over-drives, over-loads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or causes or, being the owner permits, any animals to be so treated; or

(b)employs in any work or labour or for any purpose any animal which, by reason of its age or any disease, infirmity, wound, sore or other cause, is unfit to be so employed or, being the owner, permits any such unfit animal to be so employed; or

(c)willfully and unreasonably administers any injurious drug or injurious substance to any animal or willfully and unreasonably causes or attempts to cause any such drug or substance to be taken by any animal; or

(d)conveys or carries, whether in or upon any vehicle or not, any animal in such a manner or position as to subject it to unnecessary pain or suffering; or

(e)keeps or confines any animal in any cage or other receptacle which does not measure sufficiently in height, length and breadth to permit the animal a reasonable opportunity for movement; or

(f)keeps for an unreasonable time any animal chained or tethered upon an unreasonably short or unreasonably heavy chain or cord; or(g)being the owner, neglects to exercise or cause to be exercised reasonably any dog habitually chained up or kept in close confinement; or

(h)being the owner of any animal, fails to provide such animal with sufficient food, drink or shelter; or

(i)without reasonable cause, abandons any animal in circumstances which render it likely that it will suffer pain by reason of starvation or thirst; or

(j)willfully permits any animal, of which he is the owner to go at large in any street while the animal is affected with contagious or infectious disease or, without reasonable excuse permits any diseased or disabled animal, of which he is the owner, to die in any street; or

(k)offers for sale or, without reasonable cause, has in his possession any animal which is suffering pain by reason of mutilation, starvation, thirst, overcrowding or other ill-treatment; or

(l)mutilates any animal or kills any animal (including stray dogs) by using the method of strychnine injections in the heart or in any other unnecessarily cruel manner; or;

m) solely with a view to providing entertainment—

(i)confines or causes to be confined any animal (including tying of an animal as a bait in a tiger or other sanctuary) so as to make it an object of prey for any other animal;

or(ii)incites any animal to fight or bait any other animal; or

(n)organises, keeps, uses or acts in the management of, any place for animal fighting or for the purpose of baiting any animal or permits or offers any place to be so used or receives money for the admission of any other person to any place kept or used for any such purposes; or

(o)promotes or takes part in any shooting match or competition wherein animals are released from captivity for the purpose of such shooting;he shall be punishable, in the case of a first offence, with fine which shall not be less than ten rupees but which may extend to fifty rupees, and in the case of a second or subsequent offence committed within three years of the previous offence, with fine which shall not be less than twenty-five rupees but which may extend to one hundred rupees or with imprisonment for a term which may extend to three months, or with both.

(2)For the purposes of sub-section (1), an owner shall be deemed to have committed an offence if he has failed to

exercise reasonable care and supervision with a view to the prevention of such offence:

Provided that where an owner is convicted of permitting cruelty by reason only of having failed to exercise such care and supervision, he shall not be liable to imprisonment without the option of a fine.

(3) Nothing in this section shall apply to—

(a) the dehorning of cattle, or the castration or branding or nose-roping of any animal, in the prescribed manner; or

(b) the destruction of stray dogs in lethal chambers or by such other methods as may be prescribed; or

(c) the extermination or destruction of any animal under the authority of any law for the time being in force; or

(d) any matter dealt with in Chapter IV; or

(e) the commission or omission of any act in the course of the destruction or the preparation for destruction of any animal as food for mankind unless such destruction or preparation was accompanied by the infliction of unnecessary pain or suffering."

18. From the allegations leveled in the FIR, it appears that the accused had treated the animal so as to subject them to unnecessary pain and sufferings, which amounts to cruelty to animals as per the provisions contained under Section 11(1)(a) of The Prevention Of Cruelty To Animals Act, 1960. Therefore, this Court does not find force in the submission of the learned counsel for the applicant that from the allegations leveled in the FIR, no offence is made out against the applicant.

19. The application lacks merit and the same is hereby **dismissed**.

(Subhash Vidyarthi, J.)

Order Date :- 22.3.2024
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