

Neutral Citation No. - 2024:AHC-LKO:35383

Court No. - 27

Case :- APPLICATION U/S 482 No. - 2927 of 2024

Applicant :- Ankur Shukla And Others

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

Counsel for Applicant :- Piyush Mishra, Vinay Prakash Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed, J.

1. In compliance of the order dated 25.04.2024, the wife of opposite party no.2, namely, Smt. Ankita Shukla is present before this Court in person. She has been identified by Sri Piyush Mishra, learned counsel for the applicant.

2. Heard Sri Piyush Mishra, learned Counsel for the applicant and Sri Vipin Mishra, opposite party No.2, in person along with Shri Ashok Kumar Singh, learned A.G.A.-1 for the State and perused the material placed on record.

3. The instant application under Section 482 Cr.P.C. has been moved by the applicants, namely, Ankur Shukla, Ram Manorath Shukla, Vijay Bahadur, Rajendra Pandey and Suraj with a prayer to quash the impugned summoning order dated 16.02.2023 passed by learned Additional Chief Judicial Magistrate, Court No.30, Lucknow in Complaint Case No.19160 of 2022, under Sections 323, 504, 506 I.P.C., Police Station Gosainganj, District Lucknow and the entire proceedings thereof.

4. The matter was already mediated between the parties several times. Last resort was also adopted by this Court. On the last occasion i.e. on 25.04.2024 the Court had passed the following order:

"In compliance of the order dated 28.03.2024, the wife

of opposite party no.2, namely, Smt. Ankita Shukla is present before this Court in person. She has been identified by Sri Piyush Mishra, learned counsel for the applicant.

Sri Vipin Mishra, opposite party no.2 is also present in person before this Court. Sri Ashok Kumar Singh, learned A.G.A.-I for the State is present for the State.

After some discussion, Smt. Ankita Shukla submits that if she will be paid Rs.7,00,000/- as one time alimony, she will settle the dispute.

Sri Vipin Mishra, opposite party no.2 submits that he wants some time to think over the proposal given by his wife.

Accordingly, put up this case on 07.05.2024.

Interim order granted earlier shall continue till the next date of listing.

On the next date of listing, Sri Vipin Mishra, opposite party no.2 as well as his wife, namely, Smt. Ankita Shukla shall remain present before this Court in person. "

5. Today when the case is taken up Vipin Mishra-opposite party No.2 submits that he is a new practicing lawyer and he is not in a position to arrange for the said amount, as agreed on earlier date and denied to pay the said amount.

6. Learned counsel for the applicant submits that marriage of daughter of applicant No.1, namely, Ankita Shukla and opposite party No.2 was solemnized on 03.11.2016 and due to their wedlock on 30.08.2017 a son was born, but after some time, son was died on 09.10.2017 due to health problem.

7. Learned counsel for the applicant further submits that after some time, opposite party No.2 and his family members started

torturing to the daughter of applicant No.1, namely, Ankita Shukla and demanded Swift Desire Car and on 08.07.2018 the opposite party No.2 and his family members beaten to Ankita Shukla and also snatched Stridhan and see off to her outside of the village of applicant No.1. Thereafter, applicant No.1 moved application to the Station House Officer, Jagdishpur for lodging F.I.R. against the opposite party No.2 and his family members, when the F.I.R. was not lodged, he filed application under Section 156 (3) Cr.P.C. before the Court concerned.

8. Learned counsel for the applicant further submits that learned court treated the said case as complaint case and registered as Case No. 106/2019 (new No. 891/2019) and after recording the statements under Sections 200 and 202 Cr.P.C. summoned the opposite party No.2 and other family members vide order dated 23.03.2021 under Sections 323, 504, 506, 498A I.P.C. and Section 3/4 Dowry Prohibition Act.

9. Learned counsel for the applicant further submits that against the summoning order dated 23.03.2021, the opposite party No.2 and his family members filed an application under Section 482 Cr.P.C. bearing No. 1949 of 2022 before this Hon'ble Court and this Hon'ble Court vide order dated 09.01.2023 dismissed the application with the direction to the opposite party No.2 and his family member to appear before the court concerned within 20 days from the date of order and obtain bail giving benefit of Judgment and order passed by Hon'ble Apex Court in case of Satendra Antil Vs. Central Bureau of Investigation.

10. Learned counsel for the applicant further submits the daughter of the applicant No.1-Ankita Shukla also filed an application under Section 125 Cr.P.C. on 25.11.2019 before the court of Principal Judge,

Family Court, Sultanpur for maintenance against the opposite party No.2.

11. Learned counsel for the applicant further submits that when the aforesaid fact came into knowledge of opposite party No.2, then the opposite party No.2 filed an application under Section 156 (3) Cr.P.C. on the basis of false and concocted story and the trial court treated the said application as compliant case after recording the statement of witnesses summoned the applicants vide order dated 27.05.2022 under Sections 323, 504 I.P.C. and the applicants are on bail.

12. Learned counsel for the applicant further submits that the opposite party No.2 had also filed an application under Section 156 (3) Cr.P.C. before the Additional Chief Judicial Magistrate-Sixth, Lucknow on 07.02.2022 against the applicants and one another person alleging there in that on 18.12.2021 he went for pairvi of his case in District Sultanpur, when after pairvi he went outside the court, then he saw that 3-4 persons are standing near Nala, when he reached there then Ram Manohar Shukla and one person abused him. He further alleged that when he was returning back by Purvanchal Expressway and reached near Gosaiganj Bridge, then the applicants came there and started beating to him and abuse him with filthy language and snatched Rs. 7300/-.

13. Learned counsel for the applicant further submits that the learned trial court treated the said case as complaint case and the learned Magistrate without considering the material on record and without considering the legal issue, in a cursory and mechanical manner summoned the applicants vide order dated 16.02.2023 under Sections 323, 504 and 506 I.P.C., which is impugned herein.

14. Learned counsel for the applicant further submits that the applicants have been falsely implicated in the present case with the

malice intention due to reason that the matrimonial dispute is going on between daughter of applicant No.1, namely, Ankita Shukla and complainant and as such no case is made out against the applicants under Sections 323, 504, 506 I.P.C. and there are contradiction in the application moved under Section 156(3) Cr.P.C. and statement and no specific allegation leveled against the applicants and only general allegation has been leveled.

15. Further Hon'ble the Supreme Court of India in the case of ***Lalankumar Singh and Others vs. State of Maharashtra*** reported in ***2022 SCC Online SC 1383*** has specifically held in paragraph No.38 that the order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. Paragraph No.38 of Lalankumar Singh and Others (supra) is being quoted hereunder:-

"38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation, which reads thus:

"51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is

sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words “sufficient ground for proceeding” appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion

is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

16. Further, Hon'ble the Supreme Court of India has provided guidelines in case of **State of Haryana Vs. Bhajan Lal** reported in **1992 Supp (1) SCC 335** for the exercise of power under Section 482 Cr.P.C. which is extraordinary power and used separately in following conditions:-

"102.(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 F.I.R. 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."

17. Further the Apex Court has also laid down the guidelines where the criminal proceedings could be interfered and quashed in exercise of its power by the High Court in the following cases:- **(i) R.P. Kapoor Vs. State of Punjab, AIR 1960 S.C. 866, (ii) State of Bihar**

Vs. P.P. Sharma, 1992 SCC (Cri.)192, (iii) Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.) 283 and (iv) Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra, AIR 2021 SC 1918.

18. In ***S.W. Palankattkar & others Vs. State of Bihar, 2002 (44) ACC 168***, it has been held by the Hon'ble Apex Court that quashing of the criminal proceedings is an exception than a rule. The inherent powers of the High Court itself envisages three circumstances under which the inherent jurisdiction may be exercised:-(i) to give effect an order under the Code, (ii) to prevent abuse of the process of the court ; (iii) to otherwise secure the ends of justice. The power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

19. In ***M/s Pepsi Food Ltd. and another Vs. Special Judicial Magistrate and others: 1998 (5) SCC 749***, Hon'ble Apex Court has observed:

“Summoning of an accused in a criminal case, is a serious matter. Criminal law can not be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning the accused. Magistrate had to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

20. In the instant case, there is nothing in the summoning order to show that the Magistrate concerned perused the material available on

record before passing summoning order. Hence the summoning order is bad in eye of law and resultantly it is not sustainable.

Thus, in view of the law laid down by the Hon'ble Apex Court and the facts and circumstances, as narrated above, the impugned summoning order dated 16.02.2023 passed by learned Additional Chief Judicial Magistrate, Court No.30, Lucknow in Complaint Case No.19160 of 2022, under Sections 323, 504, 506 I.P.C., Police Station Gosainganj, District Lucknow and the entire proceeding are against the spirit and directions issued by the Hon'ble Apex Court are liable to be set aside.

21. Accordingly, keeping in view the discussions/observations and judgments of Hon'ble the Apex Court referred above and the facts and circumstances, the impugned summoning order dated 16.02.2023 passed by learned Additional Chief Judicial Magistrate, Court No.30, Lucknow in Complaint Case No.19160 of 2022, under Sections 323, 504, 506 I.P.C., Police Station Gosainganj, District Lucknow and the entire proceeding of Complaint Case No.19160 of 2022, under Sections 323, 504, 506 I.P.C., Police Station Gosainganj, District Lucknow, pending before the court of Additional Chief Judicial Magistrate, Court No.30, Lucknow is hereby quashed.

22. For the reasons discussed above, the instant application under Section 482 Cr.P.C. is **allowed** in respect of the instant applicants.

23. Learned Senior Registrar of this Court is directed to transmit a copy of this order to the trial court concerned for its necessary compliance.

Order Date :- 7.5.2024

Arvind