

Neutral Citation No. - 2024:AHC-LKO:40092

Reserved

Court No. 21

Case :- APPLICATION U/S 482 No. - 3566 of 2024

Applicant :- Prof. Vipin Saxena

Opposite Party :- C.B.I/A.C.B Lko.

Counsel for Applicant :- Pranjali Krishna

Counsel for Opposite Party :- Anurag Kumar Singh

Along with

Case :- APPLICATION U/S 482 No. - 3706 of 2018

Applicant :- Vipin Saxena

Opposite Party :- C.B.I. Thru. S.P. A.C.B. Lko.

Counsel for Applicant :- Ranjit Saxena, Badrus Sahar, Deepak Saxena, Kali Prasad Singh, Pranjali Krishna, Rudresh Pandey, Satya Prakash Mishra, Shakti Vikram Srivastava

Counsel for Opposite Party :- Bireshwar Nath, Anurag Kumar Singh

Hon'ble Jaspreet Singh, J.

1. The instant petition bearing No. 3566 of 2024 has been preferred by the petitioner under Section 482 Cr.P.C. claiming the following reliefs:-

"WHEREFORE, it is most humbly and respectfully prayed that this Hon'ble Court may kindly be pleased to quash the Chargesheet dated 01.08.2017, Cognizance Order dated 05.07.2018 and Discharge Rejection Order 29.11.2018 and Charges framed dated 15.12.2018, along with the entire proceedings of the Criminal Case No. 545 of 2017 [CBI vs. Vijay Kumar Dwivedi and another] under Sections 120B of the Indian Penal Code 1860 read-with Sections 7 & 13(2) read-with Section 13(1)(d) of the Prevention of Corruption Act 1988 arising out of Crime No. RC 0062017A0012 of Police Station CBI/ACB/Lucknow and pending before the Ld. Special Judge, Anti-Corruption, CBI (West), Lucknow, in respect of the applicant, namely, Vipin Saxena, so as to meet the ends of justice.

Any other orders which this Court may deem fit & proper in the interest of justice may also be passed."

2. The petitioner herein is a professor working in the Department of Computer Sciences, Baba Bheemrao Ambedkar University, Lucknow (hereinafter referred to as "University") since 25.06.2011 after he was promoted from the post of Reader.

3. It is the case of the petitioner that the University started a College of Engineering and Technology in the year 2013 offering a four year B.Tech Programme in Computer Science in Engineering, Mechanical Engineering, Civil Engineering, Electronics and Communications Engineering and Electrical Engineering. This college of engineering and technology was converted by the University as University Institute of Engineering and Technology (hereinafter referred to as U.I.E.T.).

4. The Vice Chairman of the University on 13.07.2016 conferred additional duties of Honorary Director, University, Institute of Engineering and Technology, Baba Bheemrao Ambedkar University, Lucknow to the petitioner in addition to his teaching and research work as Professor in the Department of Computer Science.

5. It is the case of the petitioner that there is no position of Honorary Director in the University nor the said position is defined in the Act and the Statutes of the University nor it is authorized or approved by any Authority of the University, accordingly, the petitioner did not have any administrative powers either to appoint or extend the term of any contract/permanent employee of the University working in the U.I.E.T, Lucknow.

6. The complainant Dr. Ved Kumar (Engineering, Chemistry) and other Assistant Professors were appointed on contract in U.I.E.T. University, Lucknow with a fix salary of Rs. 40,000/- per month for one semester through a Selection Committee as per clause of University Grants Commission, New Delhi chaired by the then Vice Chancellor of the University and with subsequent approval of the Board of Management of

the University.

7. Sri Vijay Kumar Dwivedi was a working staff member of the manpower supplier by private contractor of the University i.e. M/s Sai Nath Associates, Lucknow who was posted as a Lab Assistant in U.I.E.T, University, Lucknow.

8. It is alleged that Sri Vijay Kumar Dwivedi allegedly demanded illegal gratification of Rs. 50,000/- from Dr. Ved Kumar and other Assistant Professors who were appointed on contract for extension of their contract of service beyond 31.05.2017.

9. On the complaint dated 31.05.2017 made by Sri Vijay Kumar Dwivedi, a verification report dated 01.06.2017 was registered under Section 7 of the Prevention of Corruption Act, 1988 against Vijay Kumar Dwivedi (an outsourced private staff). A pre-trap proceeding was allegedly conducted on 02.06.2017 at 02:00 PM onwards by the Investigating Agency. Sri Vijay Kumar Dwivedi was caught red handed by the team of CBI, Lucknow while accepting illegal gratification of Rs. 50,000/- from the complainant. Subsequently, the CBI team recovered the bribe amount of Rs. 50,000/- from Sri Vijay Kumar Dwivedi.

10. A post trap proceeding was conducted by the team of the CBI at 03:30 PM on 02.06.2017 to 10:00 PM on 03.06.2017 and a post trap memo was prepared which has been brought on record as Annexure No. 6.

11. That the petitioner was illegally arrested on 03.06.2017 at 04:30 from the office of DEAN, School for Information, Science and Technology, Gautam Budh Central Library, IIIrd Floor of the University, Lucknow. The

house of the petitioner was also searched from 06:15 PM on 02.06.2017 till 12:40 AM on 03.06.2017, however, nothing incriminating was found. It is despite that the petitioner was arrested at 04:30 AM without any material to incriminate the petitioner. In the aforesaid factual backdrop, the petitioner has filed the petition seeking quashing of the charge sheet, cognizance order and the order by which the discharge application of the petitioner was rejected including the order by which the charges were framed including the entire proceedings of Criminal Case No. 545 of 2017.

12. Sri Nandit Srivastava, learned Senior Counsel assisted by Sri Panjal Krishna, learned counsel for the petitioner has submitted that neither the petitioner had made any demand nor any amount of illegal gratification was paid to the petitioner. The petitioner was neither named in the complaint nor the name of the petitioner surfaced during the verification, in the pre-trap proceedings and even in the post trap proceedings. No incriminating material including the bribe amount was found from the person or possession of the petitioner and for the aforesaid reasons, the provision of Section 7 of the Prevention of Corruption Act, 1988 was not attracted.

13. It is further urged by the learned Senior Counsel that apparently the record would indicate that the complaint made by Dr. Ved Kumar was primarily against Vijay Kumar Dwivedi who was a private outsourced employee.

14. It is Sri Dwivedi who was found involved and from whom the alleged bribe amount was recovered. It is only after completion of the trap proceedings that it dawned on the Investigating Agency that Sri Vijay Kumar Dwivedi was an outsourced employee and he did not fall within the

definition of a public servant. It is in the aforesaid backdrop that Sri Dwivedi was forced to make two calls to the petitioner which is allegedly recorded by the CBI.

15. The learned Senior Counsel further submits that even while examining the recorded conversation, it would reveal that the petitioner was busy in his work relating to the entrance examination which was to be held for the entire University and there is no material to indicate that any demand was made by the petitioner nor the tenor and texture of the conversation was such which could fulfill the parameters of Section 7 of the P.C. Act, 1988.

16. It has also been pointed out that the alleged recorded conversation between Vijay Kumar Dwivedi and the petitioner clearly indicates that the suggestions made by Sri Dwivedi were turned down and refused by the petitioner. Repeatedly, it was stated by the petitioner that Sri Dwivedi should go and attend to his ailing mother and there was nothing to remotely connect the petitioner with the alleged exchange of gratification which allegedly was given by the complainant to Sri Dwivedi.

17. It is also urged that despite the clear recorded conversation, the petitioner was falsely implicated and he has been roped in by invoking the provisions of Section 120-B I.P.C.

18. It is also urged that the entire prosecution case revolves around the statement of the alleged independent witness namely Ram Awatar, even though, he did not raise any issue of involvement against the petitioner.

19. Significantly, once Vijay Kumar Dwivedi was in the custody of the

Investigating Agency, it is alleged that in his statement, he has named the petitioner on whose behalf, he was collecting the money.

20. Needless to say, that there has been no recovery nor any demand for acceptance of illegal gratification on part of the petitioner. It is only Sri Dwivedi who was caught red handed against whom apparently the provisions of Section 7 of the P.C. Act could not be invoked, hence, a futile attempt was made and the petitioner was falsely implicated and arrested.

21. It is further urged by the learned Senior Counsel that an incomplete charge sheet was filed on 01.08.2017 before the Court without having the appropriate prosecution sanction from the Competent Authority, Moreover, by that point of time, the forensic results from the Laboratory were also not available.

22. It is further urged that an invalid prosecution sanction was filed on 10.11.2017, so much so that the alleged sanction has been signed by the Vice Chancellor who was not competent to grant.

23. It is further submitted that upon filing of the charge sheet the petitioner had earlier preferred a petition under Section 482 Cr.P.C. bearing No. 3706 of 2018 (which is connected with the instant petition) wherein the petitioner had claimed the relief of quashing of the charge sheet, however, the said petition was dismissed in default on 16.11.2022 and even though an application for recall of order dated 16.11.2022 was filed but the said application could not be disposed of and in the meantime the Special Court was pleased to take cognizance on 05.07.2018.

24. In this context, the petitioner filed an application for discharge under

Section 239 Cr.P.C. before the Special Court and another supplementary discharge application was filed indicating that Section 13 (1) (d) has been deleted w.e.f. 26.08.2018, accordingly, the petitioner cannot be charged for the said offence on 10.09.2018.

25. It is urged that the Special Court failed to consider the aforesaid aspect of the matter including the settled legal position and rejected the discharge application by means of order dated 29.11.2018 and it is in the aforesaid circumstances that the petitioner has approached this Court for the reliefs as already mentioned hereinabove and the petition be allowed.

26. Sri Anurag Kumar Singh, learned counsel for the Investigating Agency-CBI has opposed the aforesaid petition.

27. It is submitted by the learned counsel for the CBI that the petitioner has not disclosed the complete facts, inasmuch as, the petitioner, apart from filing the instant petition under Section 482 Cr.P.C. and another petition bearing No. 3706 of 2018 had also filed another petition under Section 482 Cr.P.C. bearing No. 839 of 2020 which also came to be dismissed by a coordinate Bench of this Court by means of order dated 08.08.2023 (*Vipin Saxena Vs. CBI, Lucknow and Others: 2023 (5) ALJ 725*).

28. Sri Anurag Singh has further contended that there is ample material on record to indicate the complicity of the petitioner which in any case is the subject matter of the trial, however, he submits that apart from not disclosing the filing of another petition as mentioned above, the instant petition is also not maintainable for the reason that in the earlier petition bearing No. 3706 of 2018, the petitioner had already filed an application for

recall which is still pending. It is not permissible for the petitioner to file successive applications under Section 482 Cr.P.C. while the earlier is pending.

29. It has further been contended that the conduct of the petitioner is such that inherent powers as conferred under Section 482 may not be exercised in favour of the petitioner who is attempting to misuse the process of law. In the aforesaid circumstances where the petitioner at every step is trying to delay the trial which has already commenced and at his own whims filed successive applications under Section 482 Cr.P.C. trying to rake up the same issue in different proceedings, such conduct cannot be appreciated, hence, for all the aforesaid reasons, this petition deserves to be dismissed.

30. The learned Senior Counsel for the petitioner in response has submitted that the earlier petition bearing No. 3706 of 2018 was dismissed in default and this fact has been disclosed in the instant petition. It is further submitted that an application for recall was moved which is pending but the petitioner does not intend to press the said application and as such the said application for recall may be recorded that it is not pressed and the controversy may be examined in terms of the present instant petition.

31. The learned Senior Counsel has further urged that in so far as the other petition bearing No. 839 of 2020 is concerned, the same related to a different issue as in the said petition, the petitioner had assailed the invalid prosecution sanction order dated 26.10.2017 which did not find favour with the Special Court who rejected the application on 07.03.2019 which was escalated by the petitioner in the petition aforesaid. Since that is not the subject matter, hence, the reference of the said petition was not given,

however, that is merely an inadvertence and may not be taken against the petitioner as suppression and the petition may be considered on its own merit.

32. The Court has heard the learned counsel for the parties and also perused the material on record.

33. At the outset, since the counsel for the petitioner has stated that he does not wish to press the application for recall bearing ***I.A. No. 14 of 2023 in Petition No. 3706 of 2018***, the same is ***dismissed as not pressed***, as a result, the petition which was dismissed in default shall now be ***consigned to records***.

34. At the outset, it may be noticed that the inherent powers conferred on this Court in terms of Section 482 Cr.P.C. are very wide and pervasive. It is equally settled that greater the powers conferred on the Court then it is the responsibility of the Court to exercise the same with great circumspection.

35. In the instant case, the record reflects that the charge sheet was filed on 01.08.2017. It is at that very stage that the petitioner had filed the earlier petition bearing No. 3706 of 2018 on 29.05.2018.

36. This Court deems appropriate to reproduce the prayer made in the said petition:-

*"WHEREFORE, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to quash the petitioner's prosecution in the Criminal Case No. 545 of 2017 [C.B.I. Vs. Vijai Dwivedi & another] under Sections 120-B of the Indian Penal Code, 1860 and Sections 7 & 13(2) read-with 13(1)(d) Prevention of Corruption Act, 1988 arisen out of Crime No. R.C. 0062017A0012 of P.S. C.B.I./A.C.B./Lucknow and pending in the Court of Ld. Special Judge. (Anti-Corruption), West U.P., Lucknow, so as to secure the ends of justice:
Any other orders which this Court may deem fit & proper in the interest of justice may also be passed."*

37. The record would further indicate that even though the said petition

was filed. The record indicates that repeatedly time was taken in the said petition and apparently there has been no consideration on merits nor the application for interim relief was pressed. Mere filing of the petition bearing No. 3706 of 2018 would not operate as a stay on the proceedings of the Trial Court and thus the proceedings went on before the Trial Court.

38. While the said petition was pending, the Trial Court took cognizance on 05.07.2018. At that stage, it was open for the petitioner to have amended his petition to have raised the issue regarding the cognizance taken by the Court, however, it was not done. In the alternate, the petitioner filed an application seeking discharge before the Trial Court on 10.09.2018 and the same was rejected on 29.11.2018. Consequently, the charges were framed on 15.12.2018 and significantly till this point of time, neither the said orders were challenged in the pending petition nor the fresh petition was filed.

39. The petitioner once again made another application before the Trial Court challenging the order for grant of prosecution dated 26.10.2017, however, this application was rejected on 07.03.2019. This order dated 07.03.2019 was again assailed by the petitioner in a petition under Section 482 Cr.P.C. bearing No. 839 of 2020 which as noticed above was dismissed on 08.08.2023 by a Coordinate Bench of this Court. The said order passed by a coordinate Bench of this Court was further assailed by the petitioner before the Apex Court, however, the SLP (Criminal) No. 15645 of 2023 also came to be dismissed on 11.12.2023.

40. It is in the aforesaid backdrop that having faced with dismissal at several fronts, the petitioner once again has approached this Court by

means of the instant petition invoking the powers of this Court under Section 482 Cr.P.C. and the entire proceedings of criminal case no. 545 of 2017 has been challenged.

41. Admittedly, the petitioner did not disclose the fact regarding the petition under Section 482 Cr.P.C. bearing No. 839 of 2020. Even though, in the said petition, the challenge has been raised to the prosecution sanction order but the fact remains that in the instant petition as well in paragraphs 22, 23 and 28 it refers to the contentions regarding the sanction order. For the sake of ready reference, the said paragraphs are being reproduced hereinafter:-

"22. That it is essential to mention here that incomplete charge-sheet was filed on 01.08.2017 in the Ld. Court, CBI (West), Lucknow without taking appropriate Prosecution Sanction from the Competent Authority of the petitioner as well as without waiting results of the Laboratory Analysis.

23. That it is important to note here that invalid Prosecution Sanction was filed on 10.11.2017 as the said invalid Prosecution Sanction was granted by the then Vice Chancellor of the University on 26.10.2017, who was not competent authority to grant sanction against the petitioner as per Section 19 of P.C. Act 1988. Further, the invalid Prosecution Sanction was based on the invalid Minutes of Emergent Meeting of the Board of Management of the University held on 08.09.2017 at 12:00 noon in the Board Room of the University in which required quorum of the Meeting was not completed as per Act and Statute of the University. The true copies of Prosecution Sanction dated 26.10.2017 issued by the then Vice Chancellor of the University, invalid minutes of emergent meeting of BoM dated:08.09.2017, and extract portion of Act and Statute of the University related to required quorum of meeting of BoM are collectively annexed here-with as Annexure No. A-15.

28. That after decision on the validity of the Prosecution Sanction vider order dated the record of the statements of prosecution witnesses was started 28.05.2019. The certificate Copy of Charges framed on 15.12.2018 is being annexed herewith as Annexure No. A-19"

42. This fact was apparently known to the petitioner who has raised the said ground and also indicated the facts in relation to the said ground but did not disclose the filing and the outcome of the petition bearing Petition No. 839 of 2020 which was dismissed by a coordinate Bench of this Court by a detailed order. In this regard, this Court draws strength from the

decision of the Apex Court in ***Bhaskar Laxman Jadhav and others Vs.***

Karamveer Kakasaheb Wagh Education Society and others; (2013) 11

SCC 531 wherein the Apex Court has considered the issue of suppression

of facts and the relevant paragraphs read as under:-

“42. While dealing with the conduct of the parties, we may also notice the submission of learned counsel for respondent No.1 to the effect that the petitioners are guilty of suppression of a material fact from this Court, namely, the rejection on 2nd May 2003 of the first application for extension of time filed by the trustees and the finality attached to it. These facts have not been clearly disclosed to this Court by the petitioners. It was submitted that in view of the suppression, special leave to appeal should not be granted to the petitioners.

43. Learned counsel for the petitioners submitted that no material facts have been withheld from this Court. It was submitted that while the order dated 2nd May 2003 was undoubtedly not filed, its existence was not material in view of subsequent developments that had taken place. We cannot agree.

44. It is not for a litigant to decide what fact is material for adjudicating a case and what is not material. It is the obligation of a litigant to disclose all the facts of a case and leave the decision making to the Court. True, there is a mention of the order dated 2nd May 2003 in the order dated 24th July 2006 passed by the JCC, but that is not enough disclosure. The petitioners have not clearly disclosed the facts and circumstances in which the order dated 2nd May 2003 was passed or that it has attained finality.

45. We may only refer to two cases on this subject. In Hari Narain v. Badri Das, AIR 1963 SC 1558 stress was laid on litigants eschewing inaccurate, untrue or misleading statements, otherwise leave granted to an appellant may be revoked. It was observed as follows:-

“It is of utmost importance that in making material statements and setting forth grounds in applications for special leave, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. That is why we have come to the conclusion that in the present case, special leave granted to the appellant ought to be revoked. Accordingly, special leave is revoked and the appeal is dismissed. The appellant will pay the costs of the respondent.”

46. More recently, in Ramjas Foundation vs. Union of India, (2010) 14 SCC 38 the case law on the subject was discussed. It was held that if a litigant does not come to the Court with clean hands, he is not entitled to be heard and indeed, such a person is not entitled to any relief from any judicial forum. It was said:-

"The principle that a person who does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in others courts and judicial forums. The object underlying the principle is that every court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have a

bearing on adjudication of the issue(s) arising in the case."

43. In light of the above, this Court does not accept the contention of the learned Senior Counsel for the petitioner that the fact of the said petition was inadvertently not mentioned.

44. This Court further finds that even though the earlier petition bearing No. 3706 of 2018 continued to remain pending before this Court, however, another revealing fact is that in the said petition, the charge sheet was under challenge dated 01.08.2017 while the said petition came to be filed on 29.05.2018 i.e. almost after 9 months. Knowing fully well that there was no interim order granted in the petition, the cognizance was taken on 05.07.2018, thereafter the discharge application was filed which was rejected on 29.11.2018 and the charges came to be framed on 15.12.2018, even then, there was never a direct challenge to the said proceedings or orders.

45. As already noticed above, the petitioner challenged the grant of prosecution order dated 26.10.2017 which came to be rejected on 07.03.2019 and yet the petition assailing the same under Section 482 Cr.P.C. was filed in the year 2020 which came to be rejected on 08.08.2023 and the said order attained finality after the dismissal of the Special Leave Petition on 11.12.2023.

46. This instant petition has been filed on 31st of March, 2024 and in the chronology of events as noticed hereinabove, this Court finds that the charge sheet filed on 01.08.2017 came to be assailed after 9 months. After the cognizance was taken in July, 2018, the Discharge Application being dismissed in November, 2018 and the charges were framed in December,

2018, now at this stage, the petition has been filed in the year 2024 assailing the entire proceedings of criminal case no. 545 of 2017.

47. May be, the earlier petition bearing No. 3706 of 2018, though filed, but in absence of any interim order could not prevent the Trial Court from proceeding further. The said petition came to be dismissed in default on 16.11.2022 and the record would indicate that the application for recall was moved on 23.08.2023, i.e. after almost 8 months. In the meantime, an attempt was made by the petitioner to file another petition bearing No. 839 of 2020 under Section 482 Cr.P.C. which also came to be dismissed and the said dismissal order was upheld by the Apex Court in December, 2023 and the instant petition has been filed on 31st March, 2024 i.e. after three months. Even though the statement has been made at the bar that the application for recall may be dismissed as not pressed and the matter may be examined afresh in the instant petition, however, this Court finds that there is a deliberate attempt of the petitioner to stall the trial which had already commenced and witnesses have been examined.

48. This Court further finds draws strength from the decision of the Apex Court in ***Bisham Lal Verma Vs. State of U.P. and Another; 2023 SCC OnLine SC 1399*** wherein in paragraphs 11 and 12, it has been held as under:-

“11. We are in complete agreement with these observations of the Madras High Court. Though it is clear that there can be no blanket rule that a second petition under Section 482 Cr. P.C. would not lie in any situation and it would depend upon the facts and circumstances of the individual case, it is not open to a person aggrieved to raise one plea after the other, by invoking the jurisdiction of the High Court under Section 482 Cr. P.C., though all such pleas were very much available even at the first instance. Permitting the filing of successive petitions under Section 482 Cr. P.C. ignoring this principle would enable an ingenious accused to effectively stall the proceedings against him to suit his own interest and convenience, by filing

one petition after another under Section 482 Cr. P.C., irrespective of when the cause therefor arose. Such abuse of process cannot be permitted.

12. In the case on hand, the filing of the charge sheet and the cognizance thereof by the Court concerned were well before the filing of the first petition under Section 482 Cr. P.C., wherein challenge was made only to the sanction order. That being so, the petitioner was not at liberty to again invoke the inherent jurisdiction of the High Court in relation to the charge sheet and the cognizance order at a later point of time. The impugned order passed by the Allahabad High Court holding to this effect is, therefore, incontrovertible on all counts and does not warrant interference.”

49. This Court for the aforesaid reasons is not inclined to entertain the aforesaid petition which appears to be a misuse of the process of law, accordingly, being devoid of merits is accordingly ***dismissed***. Costs are made easy. The Trial Court is directed to expedite the trial.

50. In light of the statement made by learned counsel for the petitioner that he does not press the recall application bearing I.A. No. 14 of 2023 and the same be dismissed as not pressed so in light thereof the petition bearing No. 3706 of 2018 shall stand consigned to records.

Order Date :- 27th May, 2024

Asheesh

(Jaspreet Singh, J.)