

Court No. - 27

Case :- APPLICATION U/S 482 No. - 4316 of 2024

Applicant :- Suresh Chandra Mishra

Opposite Party :- State Of U.P. Thru. Secy. Home Lko. And 2 Others

Counsel for Applicant :- Raj Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed,J.

Heard Shri Raj Kumar Mishra, the learned counsel for the applicant as well as Sri Rajiv Kumar Verma, learned AGA-I for the State and perused the record.

The instant application under Section 482 Cr.P.C. has been filed by the applicant with a prayer to quash the entire proceedings related to Charge Sheet No.72-B of 2016 dated 05.01.2016 in F.I.R. No.188/2012, Case Crime No.45 of 2013, under Section 302 I.P.C., Police Station Musafirkhana, District Amethi and order dated 20.04.2024 passed by learned Chief Judicial Magistrate in Criminal Case No.45 of 2013.

The applicant has approached this Court by filing Application under Section 482 Cr.P.C. No.1824 of 2014, wherein a co-ordinate Bench of this Court had passed a detailed order on 22.11.2023, whereby the same was dismissed. The order dated 22.11.2023 is being reproduced hereunder:-

"Heard.

Present application under Section 482 Cr.P.C. has been filed for the following main relief:-

"The petitioner named above most respectfully begs to submit that for the facts, reasons and circumstances stated in the accompanying affidavit, that this Hon'ble court may kindly be pleased to quash the impugned order dated 22.03.2014, passed by the Chief Judicial Magistrate, Sultanpur pursuant to F.I.R. in case crime No. 45 of 2013, Under Section 302 IPC, at Police Station- Kotwall Musaphirkhana, District- Amethi, which is admittedly the second F.I.R. and the State Govt. may be directed to decide petitioner's representation (Annexure No. 7) pertaining to transfer of investigation of present case from local police to any other independent investigating agency."

Averments made in the affidavit filed in support of the present application under Section 482 Cr.P.C. are as under:-

"1. That the deponent is the petitioner himself and as such he is fully conversant with the facts and circumstances of the case deposed hereunder.

2. That as the matter of fact that the petitioner is innocent person and he has falsely and wrongly been implicated in the present case due to enmity.

3. That the present petitioner has preferred the present petition under section 482 Cr. P. C. before this Hon'ble court for quashing of the impugned order dated 22.03.2004, passed by the Chief Judicial Magistrate, Sultanpur in case crime No. 45 of 2013, Under Section 302/395 IPC, at Police Station- Kotwali Musaphirkhana, District- Amethi by which the learned Chief Judicial Magistrate process under section 82 Cr. P. C.

4. That just to elaborate the factual matrix of the present case it is necessary to bring here some important and relevant facts before this Hon'ble court.

5. That one Jantri Prasad (Opposite party No. 2) has lodged a First Information report about the death of his son deceased Surendra Prasad Dwivedi on 22.10.2012 with Police Station- Kurwar, District-Sultanpur and not arrayed any person as accused and the report was entered in general diary as G.D. report No. 06. The typed copy of the G.D. report No. 06 is being annexed herewith as ANNEXURE NO. 1 to this affidavit.

6. That as per prosecution story stated in the above report that the deceased leaved the house for Sultanpur to purchase the Engine and for this purposes, the deceased has Rs. 1,13,300/- and one Rinkoo Sardar informed the complainant that the deceased was lying unconscious near the shop of Siya Ram @ Piyare Halwai on Kotiya Road. On this information the son of complainant Dharmendra Kumar and Nati Prabhat went and found that the deceased was lying unconscious on bench near the shop of Siya Ram @ Piyare Halwai and they found that the money was missing and they bring him to home and they thought that the deceased will be OK by morning but at 4.00 am in the morning they saw that the deceased died.

7. That the petitioner and complainant both belong to same family. The grand mother of the petitioner and the grandfather of the complainant were real brother and sister and both petitioner and opposite parties are residing in same village and relations between them become inimical after the above incident.

8. That the entire criminal prosecution is being challenged on the ground that the entire story setup by the impugned FIR is tainted with malafide on the part of private respondent with whom the relation of the petitioner had become inimical under the certain circumstances after the registration of aforementioned G.D. report.

9. That it is undisputed that pursuant to the initial information by way of first information reduced in writing in G.D. No. 06, pursuant to which the investigation was undertaken resultantly post-mortem. and inquest was conducted and the evidence collection process was started by the investigating agency in its plenary power.

10. That subsequent there to after the lapse of more than 1 month, the same informant i.e. O. P. No. 2 lodged the second FIR against the petitioner on 14.12.2013, which was numbered as case crime no. 45/2013, despite the fact that lodging of second FIR in writing after initiation of initial investigation is wholly prohibited being hit by section 162 Cr. P. C. and the subsequent investigation pursuant to the subsequent FIR is unsustainable in law under the principles propounded by Hon'ble Supreme Court in the case of T. T. Antony Vs. State of Kerala, reported in 2001 (6) SCC 181. The true and typed copy of the Tehrir and second FIR is being annexed herewith as ANNEXURE NO. 2 to this affidavit.

11. That the relevant extracts of the judgment passed by Hon'ble Supreme Court

in the case of "T. T. Antony Vs. State of Kerala, reported in 2001 (6) SCC 181", is reproduced here below:

19. An information given under sub-section (1) of Section 154 of Cr.P.C. is commonly known as First Information Report (F.I.R.) though this term is not used in the Code. It is a very important document. And as its nick name suggests it is the earliest and the first information of a cognizable offence recorded by an officer in charge of a police station. It sets the criminal law into motion and marks the commencement of the investigation which ends up with the formation of opinion under Section 169 or 170 of Cr.P.C., as the case may be, and forwarding of a police report under Section 173 of Cr.P.C. It is quite possible and it happens not infrequently that more informations than one are given to a police officer in charge of a police station in respect of the same incident involving one or more than one cognizable offences. In such a case he need not enter every one of them in the station house diary and this is implied in Section 154 of Cr.P.C. Apart from a vague information by a phone call or a cryptic telegram, the information first entered in the station house diary, kept for this purpose, by a police officer in charge of a police station is the First Information Report - F.I.R. postulated by Section 154 of Cr.P.C. All other informations made orally or in writing after the commencement of the investigation into the cognizable offence disclosed from the facts mentioned in the First Information Report and entered in the station house diary by the police officer or such other cognizable offences as may come to his notice during the investigation, will be statements falling under Section 162 of Cr.P.C. No such information/statement can properly be treated as an F.I.R. and entered in the station house diary again, as it would in effect be a second FIR and the same cannot be in conformity with the scheme of the Cr.P.C. Take a case where an FIR mentions cognizable offence under Section 307 or 326 I.P.C. and the investigating agency learns during the investigation or receives a fresh information that the victim died, no fresh FIR under Section 302 I.P.C. need be registered which will be irregular; in such a case alteration of the provision of law in the first FIR is the proper course to adopt. Let us consider a different situation in which H having killed W, his wife, informs the police that she is killed by an unknown person or knowing that W is killed by his mother or sister, H owns up the responsibility and during investigation the truth is detected; it does not require filing of fresh FIR against H - the real offender-who can be arraigned in the report under Section 173(2) or 173(8) of Cr.P.C., as the case may be. It is of course permissible for the investigating officer to send up a report to the concerned Magistrate even earlier that investigation is being directed against the person suspected to be the accused.

20. The scheme of the Cr.P.C. is that an officer in charge of a Police Station has to commence investigation as provided in Section 156 or 157 of Cr.P.C. on the basis of entry of the First Information Report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of evidence collected he has to form opinion under Section 169 or 170 of Cr.P.C., as the case may be, and forward his report to the concerned Magistrate under Section 173(2) of Cr.P.C. However, even after filing such a report if he comes into possession of further information or material, he need not register a fresh FIR, he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 Cr.P.C.

21. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of Cr.P.C. only the earliest or the first information in regard to the commission of a cognizable offence

13. That there are major contradictions in both the reports lodged by the O. P. No. 2, in first report the O. P. No. 2 has stated that he has received information about the incident from one Rinkoo Sardar @ Rishi and in second FIR, the O. P. No. 2 has stated that he has received information from one Harischandra Jaiswal.

14. That to the best of the knowledge of the petitioner that during investigation the investigating officer recorded the statement of some persons under section 161 Cr. P. C. and on the basis of evidence collected during investigation the investigating officer trying to arrest the petitioner inspite the fact that the petitioner was initially cooperating with the investigation.

15. That it is important to mention here that the persons, on whose behalf the investigating officer recorded the statement and mentioned in the case diary, they have given their affidavits to Superintendent of Police, Amethi/Sultanpur to the extent that the petitioner is innocent and he has not committed any crime and they have not given any statement before the investigating officer with regard to involvement of petitioner in said crime. They have also said that the deceased was usually lying in Aliganj Bazzar in drunken condition. The true copies of the affidavits are being annexed herewith as ANNEXURE NO. 3 to this affidavit.

16. That during investigation, the investigating office has not recorded statement of Harischandra Jaiswal till today. That in between the Harischandra Jaiswal died due to illness and the another person namely Rinkoo Sardar @ Rishi has given his affidavit before Superintendent of Police about the innocence of the petitioner and in his affidavit he has stated that the investigating officer has not recorded his statement U/s 161 Cr. P. C.

17. That it is important to mention here that that one of the prosecution witness namely Kallan was on Haj at the time of so called incident but the investigating officer has recorded his statement with regard to incident in question on behest of O. P. No. 2.

18. That apart from above the several villagers have given application with their sign and thumb impression to the investigating officer and stated that the petitioner has been falsely implicated by the opposite party No. 2 due to enmity. The true copy of the application moved by the villagers is being annexed herewith as ANNEXURE NO. 4 to this affidavit.

19. That it is also important to mention here that the deceased has some illicit relation with some women and due to this the family members of the girl was angry with the deceased and it is further submitted that 8-10 days before the so called incident the quarrel was taken place between the deceased and one Chhottan Lohar.

20. That deceased has enmity with several persons and it is possible that the so called incident occurred with him by any other person.

21. That it is also important to submit here that before the so called incident there was no enmity between the families of the petitioner and the O. P. No. 2 hence the petitioner has no motive to commit the crime in question.

22. That in between the investigating officer has moved an application before the Chief Judicial Magistrate, Sultanpur for issuance of process under section 82 Cr. P. C. and learned Magistrate has issued the process under section 82 Cr.P.C. against the petitioner in routine and mechanical manner. The certified copy of the impugned order dated 22.03.2014 is being annexed herewith as ANNEXURE NO.

5 to this affidavit.

23. That in the case of "Devendra Singh Negi Vs. State of UP, reported in 1993 (30) ACC 455", this Hon'ble Court dealt with the power and procedure for issuance of process U/s 82 & 83 Cr.P.C. and framed guidelines in this regard.

24. That in another judgment passed by this Hon'ble Court in case of "Sudhendun Vs. State of UP, reported in 1995 (2) JIC 2033", Justice Jafri held that when process U/s 82 & 83 Cr.P.C. has been issued by the magistrate against the accused, the whole family of the accused have to suffer. The copy of the judgment passed by this Hon'ble Court is being annexed herewith as ANNEXURE NO. 6 to this affidavit.

25. That the investigating officer of the present case is acting on the behest of complainant due some extraneous consideration paid by the O. P. No. 2 and not conducting the investigation in right manner.

26. That only due to this reason the petitioner has moved an application before Hon'ble the Chief Minister and other authorities for transferring the investigation of present case from local police to any other independent investigating agency like CBCID, etc. The copy of the application moved by the petitioner is being annexed herewith as ANNEXURE NO. 7 to this affidavit.

27. That the petitioner has no concern with the offence in question.

28. That the petitioner is reputed and responsible person of the society and law abiding citizen of this country.

29. That since the petitioner gets knowledge about his false implication in this case, he is cooperating with the investigation of the case and still cooperating with the investigation but due to some illegal gratification provided by the opposite party No. 2, the investigating officer of this case is harassing the petitioner and he is continuously trying to insult the petitioner and his family members.

30. That despite this fact that the petitioner is cooperating with the investigation of the case, the learned Chief Judicial Magistrate, Sultanpur has passed the impugned order and issued the process under section 82 Cr.P.C. against the petitioner vide order dated 22.03.2014, only on the instance of investigating officer concerned and not applied full of his judicial mind.

31. That the petitioner has not committed any offence for he will be sent behind the bars.

32. That no offence of any kind is made out against the petitioner

33. That except the present case the petitioner has no criminal history.

34. That the petitioner is cooperating with the investigation of the case and giving undertaking to this effect that he will be always cooperating with the investigation of the present case.

35. That being aggrieved and having no other option the petitioner is filing the present petition Under Section 482 Cr.P.C. to invoke the inherent jurisdiction of this Hon'ble Court to prevent the abuse of the process of. the court.

36. That for the facts and circumstances stated here in above, the impugned order dated 22.03.2014 is liable to be quashed by this Hon'ble Court and process under section 82 Cr.P.C issued against the petitioner are liable to be stayed by this Hon'ble Court and respondents are also liable to be directed by this Hon'ble Court to the effect that no coercive action will be initiated against the petitioner subject to cooperation of the petitioner with investigation, during the pendency of this petition.

37. That it is most respectfully prayed that in the interest of justice that this Hon'ble Court may kindly be pleased to quash the impugned order dated 26.03.2008 and it is further prayed that this Hon'ble Court may kindly be pleased to stay the Non Bailable warrant and process under section 82 Cr.P.C. issued against the petitioner during pendency of the present petition."

Considering the entire facts of the case, quoted above, this Court finds that the order dated 22.03.2014 passed by the Chief Judicial Magistrate, Sultanpur (in short "CJM") by which, the CJM exercised the power under Section 82 of Cr.P.C. has been challenged on the ground that second FIR is not permissible. It is to be noted that the FIR dated 14.12.2012 as also the pending criminal proceedings including charge sheet have not been challenged by means of present application under Section 482 Cr.P.C. and only consequential order has been challenged and taking note of this aspect of the case, this Court finds that the basis of the order dated 22.03.2014 would remain intact even if interference is made by the court in the order dated 22.03.2014 and accordingly, this Court is of the view that interference in the order dated 22.03.2014 would be a futile exercise on the ground taken by the applicant. Thus, this Court is not inclined to grant relief to the applicant which relates to the order dated 22.03.2014.

For the reasons aforesaid, the judgment passed in the case of **T.T. Antony vs. State of Kerala; 2001 (6) SCC 181**, would not apply in the instant case.

At this stage, it would be apt to refer the judgment passed by the Hon'ble Apex Court in the case of **Nirmal Singh Kahlon vs. State of Punjab & Others; (2009) 1 SCC 441**, as per which, in certain situation second FIR is permissible.

So far as the relief pertaining to transfer of investigation is concerned, it is to be noted that the view of Hon'ble Apex Court is that the accused cannot ask for changing the investigating Agency or to do investigation in a particular manner including for court monitored investigation. Thus, the applicant is not entitled to this relief also.

Taking note of aforesaid, this Court is of the view that interference in the matter is not required. Accordingly, the application under Section 482 Cr.P.C. is **dismissed**.

It is open for the applicant to take legal recourse as may be available to him under law."

The contention of the learned counsel for the applicant is that no offence against the applicant is disclosed and the present prosecution has been instituted with a malafide intention for the purposes of harassment.

Per contra, the learned AGA has contended that from the allegations made in the FIR prima facie offence is made out against the applicant. The innocence of the applicant cannot be adjudged at the pre trial stage. Therefore, the applicant does not deserve any indulgence.

From the perusal of the materials on record and looking into the facts of the case and after considering the arguments made at the bar, it does not appear that no offence has been made out against the applicant.

At the stage of issuing process the court below is not expected to examine and assess in detail the material placed on record, only this has to be seen whether prima facie cognizable offence is disclosed or not. 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 Haryana Vs. Bhajanlal, 1992 SCC (Cri.)426**, (iii) **State of Bihar Vs. P.P. Sharma, 1992 SCC (Cri.)192**, (iv) **Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.)283** and (v) **Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra, AIR 2021 SC 1918**.

From the aforesaid decisions the Apex Court has settled the legal position for quashing of the proceedings at the initial stage. The test to be applied by the court is to whether uncontroverted allegation as made prima facie establishes the offence and the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing criminal proceedings to be continued. In **S.W. Palankatkar & 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 under Section 482 Cr.P.C 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.

The High Court would not embark upon an inquiry as it is the function of the Trial Judge/Court. The interference at the threshold of quashing of non bailable warrant/ criminal proceedings in case in hand cannot be said to be exceptional as it discloses prima facie commission of an offence. In the result, the prayer for quashing of non bailable warrant is refused. There is no merit in this case. The applicant has ample opportunity to raise all the objections at the appropriate stage.

However, the applicant is directed to appear and surrender before the court below and apply for bail within four weeks from today, and his prayer for bail shall be considered expeditiously in accordance with law and as per law after hearing the Public Prosecutor.

With the aforesaid observations, this application stands **disposed of**.

Order Date :- 10.5.2024
Saurabh