

Court No. - 11

Case :- APPLICATION U/S 482 No. - 1149 of 2021

Applicant :- Rasheed Khan

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Manoj Kumar Singh, Ashok Kumar Yadava, Pravin Kumar Singh, Ravindra Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Ms. Anupama Bhadauriya holding brief of Sri Manoj Kumar Singh and Sri Sushil Kumar Pandey, learned AGA for the State.

2. By means of this petition under Section 482 Cr.P.C., the petitioner has prayed the following relief:-

"WHEREFORE, it is most humbly prayed that this Hon'ble Court may kindly be pleased to quash the impugned chargesheet (Police Report) bearing no. 01 of 2020, dated 06.02.2021, vide Case Crime No. 0528 of 2020, under Sections 3(1) U.P. Gangster Act, Police Station-Dargah Sharif, District-Bahraich and order of cognizance and summoning order dated 15.02.2021 as well as Non Bailable Warrant dated 19.02.2021, passed by learned Vth Additional District and Sessions Judge/Gangster Judge, Bahraich in Case No. 212 of 2021 (State Versus Azmat Ali alias Bhuri and others) and further proceedings of the case in pursuance thereof, pending in the court of learned Vth Additional District and Sessions Judge/Gangster Judge, Bahraich, in respect of petitioner only, in the ends of justice."

3. Learned counsel for the petitioner has drawn attention of this Court towards the Gang Chart (Annexure No. 4) wherein one case has been imposed against the petitioner bearing Case Crime No. 307 of 2020, under Sections 420, 467, 466, 471 IPC, Police Station Dargah Sharif, District Bahraich. Learned counsel for the petitioner has stated that the proceeding of the aforesaid case has been quashed by this Court, on the basis of compromise entered between the parties.

4. Attention has been drawn towards the order dated 30.11.2023 passed by this Court in Application u/s 482 Cr.P.C. No. 11672 of 2023 allowing the petition u/s 482 Cr.P.C. quashing the entire proceedings emanating pursuant to the Case No. 13938 of 2020 arising out of Case Crime No. 0307 of 2020 (supra). The order dated 30.11.2023 is filed alongwith the supplementary affidavit dated 12.01.2024. For the convenience, the order dated 30.11.2023 reads as under:

"Heard learned counsel for the applicants, learned AGA for the State of

U.P. and gone through the record.

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

"WHEREFORE, it is most humbly and respectfully prayed that the Hon'ble Court may kindly be pleased to set-aside/quash the entire criminal proceedings of Case No. 13938/2020 (State Versus Ajmat Ali @ Bhuri and others) arising out of impugned charge-sheet dated 14.12.2020 which has been filed against the co-accused namely Ajmat Ali @ Bhuri and petitioners no. 1 and 2 and charge-sheet dated 21.09.2021 which have been filed against the petitioners no. 3 and 4 by investigating officer in Case Crime No. 0307/2020, Under Section-420, 467, 468, 471 I.P.C. pertaining to Police Station-Dargah Sharif, District- Bahraich as well as impugned cognizance/summoning order dated 15.12.2020 against the petitioners no. 1 and 2 and summoning order dated 25.02.2022 against the petitioners no. 3 and 4 passed by the court of learned Additional Chief Judicial Magistrate, Bahraich by which the applicants/petitioners have been summoned for facing of trial under the aforesaid sections on the basis of compromise which was held in between the parties on 06.08.2022, 02.09.2022 and 02.01.2023 respectively, as contained in Annexure No. 2, 3, 4, 7, 8 & 9 to this petition, in the interest of justice."

It appears from the order dated 27.10.2023 (Annexure No. 10) that the Court concerned in compliance of order of this Court dated 05.10.2023 passed in Application U/S 482 Cr.P.C. Nos. 9597 of 2023 & 2498 of 2021 has verified the compromise mentioning therein that the parties were present and they have admitted that they have entered into an agreement voluntarily and their signatures have been verified by their respective counsels before the court.

For the relief(s) sought, on the basis of compromise, the learned counsel for the applicant has placed reliance on the judgments of the Apex Court in the case of Romgopal and others Vs. State of Madhya Pradesh, 2022 (1) SCJ 536, Gian Singh Vs. State of Punjab [2012 10 SCC 303], Mohd. Ibrahim Vs. State of U.P., 2022 SCC Online ALL 106, Gold Quest International Ltd. Vs. State of Tamilnadu, 2014 (15) SCC 235, B.S. Joshi Vs. State of Haryana, 2003 (4) SCC 675, Jitendra Raghuvanshi Vs. Babita Raghuvanshi, 2013(4) SCC 58, Madhavarao Jiwajirao Scindia Vs. Sambhajirao Chandrojirao Angre, 1988 1 SCC 692, Nikhil Merchant Vs. C.B.I. and another, 2008(9) SCC 677, Manoj Sharma Vs. State and others, 2008(16) SCC 1, State of M.P. Vs. Laxmi Narayan and others, 2019(5) SCC 688, Narindra Singh and others Vs. State of Punjab and another, (2014) 6 SCC 466, Manoj Kumar and others Vs. State of U.P and others (2008) 8 SCC 781, Union Carbide Corporation and others Vs. Union of India and others (1991) 4 SCC 584, Manohar Lal Sharma Vs. Principal Secretary and others (2014) 2 SCC 532 and Supreme Court Bar Association Vs. Union of India (1998) 4 SCC 409.

Learned Additional Government Advocate could not dispute the fact that the compromise has been entered into between the parties and now the opposite party no. 2 does not want to proceed with the proceedings in issue.

Considering the submissions advanced by learned counsel for the parties and perusing the order of trial Court dated 27.10.2023 as also taking note

of the observations made by Hon'ble Apex Court in the judgments, referred above, and the nature of dispute/crime, this Court is of the view that no purpose would be served in keeping the proceedings pending before the trial court and hence, entire proceedings pending before the trial court are hereby quashed in terms of the compromise.

Accordingly, the present application U/S 482 Cr.P.C. is allowed in above terms.

Office/Registry is directed to send the copy of this order to concerned court forthwith."

5. Learned counsel for the petitioner has, therefore, submitted that since the entire proceedings of the crime case which has been indicated in the Gang Chart have been set aside/quashed by this Court, therefore, the proceedings of Gangster Act may not continue any longer against the petitioner, inasmuch as the proceedings under the Gangster Act are not independent proceedings rather same proceedings depends upon the cases which have been indicated in the gang-chart. In support of the aforesaid arguments learned counsel for the petitioner has cited some case laws i.e. **Salim vs. State of U.P., (Allahabad) : 2019(12) ILR (Allahabad) 133, Sartaj vs. State of U.P. : 2020(111) ACrC 51 : 2020(1) ILR (Allahabad) 1659 and judgment dated 12.3.2019 in Criminal Revision No. 3309 of 2008 : Jai Prakash and others vs. State of U.P.** wherein the concurrent view of this Court is that since the proceedings under the Gangster Act are not the independent proceedings, therefore, implication and trial of the accused-applicant u/s 2/3 of Gangster Act was not justified if the criminal cases, so indicated in the gang-chart have either been quashed/set aside or in those cases the accused person has been acquitted.

6. Learned AGA has, however, tried to justify the proceedings of Gangster Act by saying that the criminal proceedings of the Gangster Act are going on and those proceedings may not be quashed/set aside for the reason that the case, so indicated in the gang-chart has been set aside. However, on being confronted on the point that if the criminal case which had been indicated in the gang chart had been set aside/quashed by this Court then how and on what basis the petitioner may be implicated and punished u/s 2/3 of the Gangster Act, he could not give proper reply.

7. Having heard learned counsel for the parties, having perused the material available on record and having regard to aforesaid case laws, I am also of the considered opinion that when the criminal case which has been indicated in the gang chart has been set aside/quashed by this Court then the foundation of the Gangster Act goes and if the very foundation of the Gangster

Act goes and the proceedings of Gangster Act would not survive on the basis of maxim "**Sublato fundamento, cadit opus**". Notably, this Court in re: **Salim vs. State of U.P. (supra)** while allowing the petition, considered and perused the judgments of the Apex Court in para 7, 8, 9, 10 and 13 which are being reproduced herein below :

"7. In support of his contention learned counsel has further placed reliance on the judgment of the Apex Court in the case of N.R. Ghosh vs. the State of West Bengal, AIR 1960 Supreme Court (SC) 239 and has relied upon in paragraph 22 of the same reads as under:-

"The principle stated in the section is that when a person has once been tried by a court of competent jurisdiction for an offence and convicted or acquitted of it, he shall not while the conviction or acquittal remains in force, be tried again for the same offence. In order, therefore, that the appellant may have the benefit of the section he must have been tried by a court of competent jurisdiction. Furthermore, such acquittal must be in force."

8. Reference to the Apex Court judgment in the case of Manipur Administration, Manipur vs. Thokchon Veere Singh, AIR 1965 (SC) 87 has also been made wherein paragraph 6 are as follows:-

Before referring to the decision of this Court in Pritam Singh v. State of Punjab(1) it would be convenient to refer to and put aside one point for clearing the ground. Section 403, Criminal Procedure Code embodies in statutory form the accepted English rule of autre fois acquit. This section is as follows:-

"403 (1) A person who has been once tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any offence for which a different charge from the one made against him might have been made under s. 236, or for which he might have been convicted under section 237. (2) A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, sub-section (1). (3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted may be afterwards tried for such last mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(1) A.T.R. 1956 S.C. 415.

(5) Nothing in this section shall affect the provisions of section 26 of the

General Clauses Act, 1897, or section 188 of this Code.

Explanation-The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused or any entry made upon a charge under section 273, is not an acquittal for the purposes of this section." Section 26 of the General Clauses Act which is referred to in s. 403 enacts:

"26. Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

We might also, in this connection, refer to Art. 20(2) of the Constitution since it makes provision for a bar against a second prosecution in an analogous case. That provision reads:

"20(2). No person shall be prosecuted and punished for the same offence more than once." As has been pointed out by this Court in State of Bombay v. S. L. Apte(1), both in the case of Art. 20(2) of the Constitution as well as s. 26 of the General Clauses Act to operate as a bar the second prosecution and the consequential punishment thereunder, must be for "same offence" i.e., an offence whose ingredients are the same. It has been pointed out in the same decision that the V Amendment of the American Constitution which provides that no person shall be subject, for the same offence, to be twice put in jeopardy of life or limb, proceeds on the same principle.

9. Reliance on Apex Court judgment in the case of Lalta and others vs. State of U.P., AIR 1970 (SC) 1381 has been made, wherein case of Pritam Singh's (supra) and Manipur Administration's case (supra) have been accepted as binding authorities on the issue. Reference to Municipal Corporation of Delhi vs. Shiv Singh 1971 (1) SCC 422 has been made where Section 26 of the general clauses Act 1897 were considered regarding the question of double jeopardy in relation to prosecution of an accused for single offence under two enactments and it was held that Section 26 of the general clauses Act prevents accused from double penalty. This judgment has been relied by the counsel to advance the proposition that the prosecution of the revisionist under the general provisions of Indian Penal Code and then under the provisions of Special Act i.e., Gangster Act on the basis of implication in the case under Section I.P.C., wherein he has been acquitted should not be permitted.

10. Counsel for the applicant has referred to the judgment, Bhagat Ram vs. State of Rajasthan (1972) 2 SCC 466, wherein the Apex Court held that even if an order of acquittal is passed by Division Bench of the Court, it is not open for the third Judge of the same Court in a subsequent stage of the same proceedings to convict the person unless the judgment of the Division Bench is set aside by the Supreme Court. In view of the principle embodied in Section 403 I.P.C.

13. Learned counsel for the applicant has relied upon the judgment in the case of Kolla Vira Raghav Rao vs. Gorantla Vlalalalal Rao, (2011) 2 SCC 703. In this case the Apex Court disapproved the prosecution of the accused under Section 420 I.P.C. After he was convicted under Section 138 N.I. Act, holding that the subsequent prosecution is barred by article

20(2) and Section 300(1) Cr.P.C. once the facts are the same. "

8. Accordingly, the impugned chargesheet (Police Report) bearing no. 01 of 2020, dated 06.02.2021, vide Case Crime No. 0528 of 2020, under Sections 3(1) U.P. Gangster Act, Police Station-Dargah Sharif, District-Bahraich and order of cognizance and summoning order dated 15.02.2021 as well as Non Bailable Warrant dated 19.02.2021, passed by learned Vth Additional District and Sessions Judge/Gangster Judge, Bahraich in Case No. 212 of 2021 (State Versus Azmat Ali alias Bhuri and others) and further proceedings of the case in pursuance thereof, pending in the court of learned Vth Additional District and Sessions Judge/Gangster Judge, Bahraich, are hereby quashed.

9. In view of above, the petition is **allowed**, so far as the petitioner is concerned.

[Rajesh Singh Chauhan,J.]

Order Date :- 29.1.2024

kkv/