

Court No. - 27

Case :- APPLICATION U/S 482 No. - 4996 of 2024

Applicant :- Kamla Singh And Another

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

Counsel for Applicant :- Aftab Ahmad

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed,J.

1. Heard Sri Aftab Ahmad, learned counsel for the applicants and Sri Ashok Kumar Singh, learned A.G.A. for the state.

2. The present application under Section 482 Cr.P.C. has been filed for quashing the impugned undated summoning order passed by learned Additional Chief Judicial Magistrate, Court No.17, Sultanpur as well as Charge Sheet dated 26.08.2023 filed under Section 419, 420, 406, 120B IPC arising out of First Information Report. No.63/2023 registered at Police Station Dhammaur, District Sultanpur, and also to quash the entire proceedings of Criminal Case No.41381/2023 "State Vs. Kamla Singh and others" pending before the Court of Additional Chief Judicial Magistrate, Court No.17, Sultanpur.

3. Learned counsel for the appellants submits that the opposite party No.2 on 06.04.2022 filed an application under Section 156(3) Cr.P.C. on 06.04.2022 stating therein that the applicant no.1-Kamla Singh and his wife Sushila Devi, the applicant no.2 herein wrongly describing her as Kamla Devi @ Sushila Devi and also impleading one Indu Bala Singh @ Indu Singh wife of Chandra Bhan Singh alleging therein that Indu Bala Singh @ Indu Singh which is one and same person of two names having no land and with the help of forged documents produced before agriculture department to usurp the amount of Pradhan Mantri Kisan Samman Nidhi (herein after referred in short as "PMKSN") and got the amount in Account no. 36380100000554 of Bank of Baroda and Account no.3738 of Dena Bank and thereafter in Baroda U.P. Gramin Bank Account No.5807 and got the installments withdrawn and

the applicant no.1 by misusing his name and khatauni has obtained the amount under the scheme of PMKSN.

4. Learned counsel for the applicants further submits that also alleged in the application filed under Section 156 (3) Cr.P.C. that Kamla Devi from Baroda U.P. Gramin Bank from account 4607 and Sushila Devi wife of Kamla Singh, the applicant no.2, from Baroda U.P. Gramin Bank Account No.4707 have withdrawn the government money by forged document. It is further stated that there is no land in the name of Kamla Devi and Sushila Devi and Indu Bala Singh and Indu Singh are same women and Kamla Singh (male) and Kamla Devi (female) both are Kamla Singh who is male. In village Sonbarasa and Mahajitpur there is no lady in the name of Kamla Devi in the family of Kamla Singh and all these persons by criminal conspiracy making forged documents wrongly using one khatauni in different accounts have misappropriated the government money under the scheme of PMKSN which is serious offence.

5. Learned counsel for the applicants further submits that on the said application the Additional Chief Judicial Magistrate, Court no.17 Sultanpur vide its order dated 13.03.2023 directed the concerned Station House Officer to register the First Information Report and conduct the investigation and in furtherance of the same, First Information Report no.63/2023 under Section 419, 420, 467, 468, 471, 409, 120-B IPC against Indu Bala Singh @ Indu Singh, the applicant no.1-Kamla Singh and applicant no.2- Kamla Devi @ Sushila Devi wife of Kamla Singh was registered.

6. Learned counsel for the applicants further submits that the applicant no.1- Kamla Singh is recorded tenure holder of Gata No.95 having an area of 0.2460 hectare, village Sonbarasa Miranpur, Tahsil Sadar, District Sultanpur having Khata No.00095 and even the applicant no.1 is not the sole owner, is co-owner with his brother Chandra Bhan Singh and 9 others persons and being an agriculturist/farmer being

entitled for the extension of benefit of PMKSN the applicant is given the said benefit alike other co-tenure holders. Copy of the khatauni of Khata No.00095 of the applicant no.1.

7. Learned counsel for the applicant further submits that so far as the applicant no.2 is concerned, her name is Sushila Devi who is the legally wedded wife of the applicant no.1 and has no other name or alias name except Sushila Devi and the applicant no.2 has no concern with the name of 'Kamla Devi' and merely to harass the applicants because of prior litigations pertaining to partition as well as even cancellation of sale deed etc., the opposite party no.2 has wrongly and illegally made unfounded and baseless allegations of the offences and in a very cursory manner the impugned charge sheet has filed therein.

8. Learned counsel for the applicants further submits that the applicant no.2 has no land in her name and she has neither applied nor received a single penny under the scheme of PMKSN and even no material showing any document pertaining to applicant no.2 or any transaction of the alleged amount of PMKSN received in the account of the applicant no.2 has been brought on record to remotely link her with the alleged offence and on the basis of allegation as well as material collected during investigation, no offence against the applicant no.2 is made out.

9. Learned counsel for the applicants further submits that as is evident from the allegation of the first information report the opposite party no.2 merely to settle the score has raised the baseless allegations reason being one Dargahi Singh executed a sale deed in favour of the applicant no.1 and his brother and the opposite party no.2 without any basis feeling aggrieved by the said sale deed filed a suit for a cancellation of the same which was dismissed and the opposite party no.2 has taken the said dismissal to the Regular Civil Appeal which is pending in the court of Additional District Judge, Sultanpur. Apart from

this litigation, a suit for the purposes of partition between the applicant no.1 and the opposite party no.2 is pending in the court of Sub Divisional Officer and merely to harass the applicants the concocted and fabricated application under Section 156(3) Cr.P.C. was submitted upon which first information report dated 04.04.2023 has been registered resulting into filing of the impugned charge sheet and passing of summoning order and the applicants for the same are before this Hon'ble Court.

10. Learned counsel for the applicants further submits that vide CD No.4 dated 15.05.2023 from the office of Block Officer, Block Dubeypur copy of Pariwar Register of the applicant no.1 as well as other co-accused viz. Indu Singh @ Indu Bala Singh was obtained and on the basis of perusal of Pariwar Register pertaining to the applicant no.1 having serial no.54 as well as house no. 54 wherein name of the applicant no.1 as the head of the family, applicant no.2 as his wife then mother of the applicant no.1 namely Brijraji Devi who has died in the year 2012 and his four children was recorded and even in the Pariwar Register also the name of the applicant no.2 "Smt. Sushila" finds place and from the same also no connectivity of the applicants can be made with the alleged offence. Copy of the Pariwar Register of the applicant no.1 alongwith its typed copy is attached herewith as Anneuxre No.5 to this application.

11. Learned counsel for the applicants further submits that thereafter vide CD No. 5 dated 29.05.2023 the khatauni of Khata No.95 was obtained and made part of the case diary wherein also the applicant no.1 being co-tenure holder his name was found recorded with other persons but there was no mention of the applicant no.2 in any capacity.

12. Learned counsel for the applicants further submits that the investigation continued and on 12.06.2023 vide CD No.6 as well as on 28.06.2023 vide CD No.7 efforts to get the documents from the office

of Deputy Director, Agriculture were made and it was only vide CD No.8 dated 27.07.2023 that the documents were said to be provided by the office of Deputy Director, Agriculture and after perusal of the documents it was recorded that as per Kisan Samman Nidhi Certificate, the applicant no.1 having registration no.252931846 was given 11 installments of Kisan Samman Nidhi in his Bank Account No.51090100014366 Bank of Baroda, U.P. Gramin Bank Branch. Similarly with regard to other co-accused namely Indu Singh the details are mentioned and thereafter with regard to one Sushila Devi having Krishi Samman Nidhi Prapatra Registration No. U.P.107531948 and account no. 51020100004707 Bank of Baroda U.P. Gramin Bank, Branch Bandhuwa Kalan 13 installments of Kisan Samman Nidhi have been deposited and thereafter with regard to one Kamla Devi having Krishi Samman Nidhi Prapatra registration no. U.P.107532379 and account no. 5102010004607 Bank of Baroda U.P. Gramin Bank, Branch Bandhuwa Kalan, 11 installments of Kisan Samman Nidhi have been deposited and after incorporating all these details vide CD No.8 dated 27.07.2023 through CD No.9 dated 22.08.2023 bank statements from Bank of Baroda pertaining to all four account holders was obtained and was made part of CD No.9 dated 22.08.2023.

13. Learned counsel for the applicants further submits that a perusal of bank statements attached to the case diary for account no.51070100004607, the account holder is Mrs. Kamla Devi wife of Ram Asrey resident of Sonbarasa Chhatouna who appears to be some other lady and has no relation either with the applicant no.1 or applicant no.2 but this is categorically stated that the applicant no.2 is not the account holder of Account No.51070100004607.

14. Learned counsel for the applicants further submits that similarly with regard to account no.51020100004707 as per the statement attached, this account belongs to one Mrs. Sushila Devi wife of Shiyaram resident of Rampur Sonbarasa Bandhwa Hasanpur, Sultanpur

and this Sushila Devi wife of Shiyaram is also some other lady having no concern either with the applicant no.1 or the applicant no.2 and payment of any installment to her on whatever basis, has no relationship with both of the applicants and this account also does not belong to the applicant no.2.

15. Learned counsel for the applicants further submits that the statement pertaining to Indu Bala Singh wife of Sandeep Kumar Singh and Indu Singh wife of Chandra Bhan Singh is the matter with which the present applicants have no concern and it is pertaining to the co-accused and the statement pertaining to account no. 51090100014366 is the account of the applicant no.1 who has received amount of installment of PMKSN being duly registered under the scheme.

16. Learned counsel for the applicants further submits that thereafter vide CD No.10 dated 26.07.2023 concluding that the applicant no.1 fraudulently in collusion and conspiracy with the employees of agriculture department and revenue department got the amount of Kisan Samman Nidhi in favour of his wife Sushila Devi @ Kamla Devi and wife of his brother Indu Bala Singh @ Indu Singh who have no land in their name and further recording that the offence of the applicant no.1 pertains to Section 419, 420, 406, 120-B IPC as such Section 467, 468, 471, 409 IPC is dropped and Section 406 IPC is added.

17. Learned counsel for the applicants further submits that in Parcha 10 dated 26.08.2023 that Indu Singh is Indu Bala and Sushila Singh is Kamla Devi, there is no Indu Bala and Kamla Devi in the village but no basis for connecting the applicant no.2 with the alleged Kamla Devi was mentioned and it is also relevant to mention here that a perusal of the account statement of Kamla Devi wife of Rsm Asrey goes to show that this account was opened on 19.02.2008 whereas this scheme was launched only on 24.02.2019. That similarly the account opened in the name of Sushila Devi wife of Shiyaram was opened on 21.04.2010 and

the account in the name of Indu Bala Singh wife of Sandeep Kumar was opened on 20.09.2013 and the account in the name of Indu Singh wife of Chandra Bhan Singh was opened on 06.01.2015 much prior to the introduction of the scheme.

18. Learned counsel for the applicants further submits that it is also relevant to mention here that the account in the name of applicant no.1 was opened on 26.07.2002 and as such all the allegations that fraudulently by forging the documents to get the amount of installments of Kisan Samman Nidhi alleged offence was committed by impersonating non-existing ladies is belied.

19. Learned counsel for the applicants further submits that thereafter vide CD No.10 dated 26.08.2023 after serving notice under Section 41(1) upon the applicant no.1 the investigation was closed by charge sheeting the applicant no.1 and applicant no.2 as well as Indu Bala Singh under Section 419, 420, 406, 120-B IPC.

20. Learned counsel for the applicants further submits that coming out from the contents of case diary and mentioning the material made available on record for initiating trial against the applicants it would not be out of context to mention here that the applicant no.2 is also having an account with Bank of Baroda, U.P. Garmin Branch having account no.51020100017199 in her name viz. Mrs. Sushila Devi wife of Kamla Singh having customer ID No.617609683 and this account was also opened on 19.01.2016 much prior to the PMKSN Scheme and in the said account not a single penny has been received from the alleged PMKSN. Copy of the details of account of the applicant no.2 and statement of account is attached herewith as Anneuxre No.12 to this application.

21. Learned counsel for the applicants further submits that on such allegation being raised on 07.12.2023 by the applicant no.1 with regard

to applicant no.2 from the office of Deputy Director of Agriculture an information under Right to Information Act, 2005 regarding her registration or payment under PMKSN was asked for and vide reply dated 30.01.2024 it was specifically replied that with regard to Sushila Devi wife of Kamla Singh having Adhar no. 5691 1289 2818 there is no registration of PMKSN Portal and there is no occasion of any payment to her. Copy of the application dated 07.12.2023 with registered post receipt with its typed copy and copy of the reply dated 30.01.2024 as sent by Deputy Director of Agriculture, Sultanpur and copy of Adhar Card of the applicant no.2 as well as Adhar Card of the applicant no.1 are attached herewith as Anneuxre No.13, 14 & 15 to this application. From the perusal of all these documents, the false implication of the applicants is writ at large.

22. Learned counsel for the appellant further submits that apart from it, with regard to alleged Kamla Devi wife Ram Asrey, Sushila Devi wife of Shiyaram after obtaining their details by PMKSN registration portal which also contains their Adhar number, it was informed by the concern official of Gram Panchayat Mahajitpur, Revenue Village Sonbarasa that Kamla wife of Ram Asrey and Sushila wife Shiyaram are not the resident of said Gram Sabha.

23. Sri Ashok Kumar Singh, learned A.G.A-I for the State opposed the argument advanced by learned Counsel for the applicants and submitted that the court below has rightly passed the summoning order and no interference by this Court is required in the instant matter but did not dispute this fact that the Khatauni records, bank statements, and responses from authorities under the Right to Information Act do not show any fraudulent activity on their part. The accounts mentioned in the FIR as belonging to Sushila Devi and Kamla Devi do not match the applicants' details.

24. After considering the arguments advanced by learned counsel for the applicants and learned A.G.A.-1 for the State and after perusal of the record, this Court is of the view that the case originated from an application under Section 156(3) Cr.P.C. submitted by the opposite party, leading to the registration of FIR No. 63/2023 against Kamla Singh and others. The FIR alleged fraudulent withdrawals of the Pradhan Mantri Kisan Samman Nidhi (PMKSN) scheme funds using forged documents. The primary allegations include fraudulent claims and withdrawals under the PMKSN scheme by the applicants and on Indu Bala Singh using forged identities and documents. However, the evidence collected and attached, such as bank statements, khatauni, and family register (Pariwar Register), does not substantiate these claims. The documentation indicates legitimate ownership and entitlement under the scheme for Kamla Singh. Notably, the bank account details provided do not link Sushila Devi to the alleged fraudulent withdrawals. Additionally, the accounts associated with the fraudulent claims belong to other individuals unrelated to the applicants.

The FIR alleges that the applicants fraudulently received funds under the PMKSN scheme using forged documents and multiple identities. Specifically, it accuses Kamla Singh of misusing his identity and land records to claim benefits and implicates Sushila Devi in conspiracy without clear evidence of her involvement.

The investigation included scrutiny of khatauni records, family registers, and account statements, which showed that the applicants' names were correctly listed, and no fraudulent activity was connected to their accounts. The accounts opened much before the scheme's initiation further discredit the allegations of scheme-specific fraud.

An RTI response from the Deputy Director of Agriculture confirmed that Sushila Devi wife of Kamla Singh, was not registered under the PMKSN scheme, nor had she received any payments, thereby negating the allegations of fraudulent claims.

The applicants have provided documents, including bank statements and RTI replies, which suggest that Sushila Devi has not

received any funds from the PMKSN scheme. Furthermore, there is no concrete evidence linking her to the alleged fraudulent accounts. The investigation also failed to conclusively establish any direct link between the applicants and the other accused individuals or fraudulent activities.

Applicant No.1 (Kamla Singh): Kamla Singh asserts that he is a bona fide beneficiary of the PMKSN scheme as a co-tenure holder of agricultural land. There is no substantial evidence that he committed fraud or forgery to receive the benefits.

Applicant No.2 (Sushila Devi): Sushila Devi claims no involvement in the scheme or any fraudulent activities. The FIR and charge sheet fail to provide material evidence linking her to the crime. Her identity appears to have been confused with another individual bearing a similar name.

The evidence presented includes Khatauni records, bank statements, and responses from authorities under the Right to Information Act. The applicants argue that the records do not show any fraudulent activity on their part. The accounts mentioned in the FIR as belonging to Sushila Devi and Kamla Devi do not match the applicants' details, indicating a possible mix-up or false implication.

Based on the material evidence and the arguments presented, it is apparent that the allegations against Kamla Singh and Sushila Devi lack substantive proof. The documents and investigation reports do not establish a prima facie case against the applicants. Moreover, the RTI responses and account details further support the applicants' claim of false implication, thus the allegations made against the applicants under Section 419, 420, 406, and 120B of the Indian Penal Code (IPC) are not substantiated by the evidence on record.

25. 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."

26. 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."

27. 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 (Crl.)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**.

28. 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.

29. 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."

30. 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 the eyes of law and resultantly it is not sustainable.

31. Thus, in view of the law laid down by the Hon'ble Apex Court and the facts and circumstances, as narrated above and also with the assistance of the aforesaid guidelines and keeping in view the nature and gravity and the severity of the offence which more particularly is a private dispute and differences, it deems proper and meet to the ends of justice that the proceeding of the aforementioned case be quashed

32. Accordingly, the present 482 Cr.P.C. application stands **allowed**. Keeping in view the law laid down by the Hon'ble Apex Court in the above referred judgment and the observation made above, the entire proceedings of Criminal Case No.41381/2023 "State Vs. Kamla Singh and others" pending before the Court of Additional Chief Judicial Magistrate, Court No.17, Sultanpur and the undated summoning order issued by the Additional Chief Judicial Magistrate, Court No.17, Sultanpur in Criminal Case No. 41381/2023 are hereby **quashed** so far as it relates to the instant applicants-Kamla Singh son of Sri Jagdamba and Sushila Devi wife of Kamla Singh.

33. Office is directed to transmit a copy of this order to the learned trial court concerned immediately.

Order Date :- 29.05.2024

Arvind