

Neutral Citation No. - 2024:AHC-LKO:5006

Reserved on 05.12.2023.

Delivered on 18.01.2024

A.F.R.

Court No. - 16

Case :- CRIMINAL APPEAL No. - 1985 of 2021

Appellant :- Aditya Kumar

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lucknow And Anr.

Counsel for Appellant :- Suresh Kumar Upadhyay, Kamal Kishor Tiwari, Manoj Kumar Mishra

Counsel for Respondent :- G.A., Maneesh Kumar Singh, Navita Sharma

Hon'ble Shamim Ahmed, J.

1. Heard Mr. Suresh Kumar Upadhyay, Advocate along with Mr. Manoj Kumar Mishra, learned Counsels for the appellant, Mr. Maneesh Kumar Singh, learned Counsel for opposite party No.2 and Ms. Shikha Sinha, learned A.G.A. for the State-opposite party No.1.

2. The present Criminal Appeal under Section 14A(1) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is being preferred by the appellant, namely-Aditya Kumar for quashing the entire criminal proceedings in Session Trial No.369 of 2021 pending before learned Special Judge, SC/ST Act, Shravasti arising out of Case Crime No.0439 of 2020, under Sections 376 I.P.C. and Section 3(2)(V) of SC/ST Act, Police Station-Sonwan, District-Shrawasti against the appellant as well as summoning order dated 29.10.2021 passed by learned Special Judge, SC/ST Act, Shrawasti and charge-sheet No.A-096 of 2021 dated 09.05.2021 against the appellant.

BRIEFS FACTS OF THE CASE

3. The case, in brief, is that the opposite party No.2/complainant, namely, Manju lodged a First Information Report against the appellant at Police Station Malhipur, District-Shrawasti under Section 376 I.P.C. and section 3(2)(V) S.C. / S.T. Act registered as Case Crime No.0439 of 2020 in pursuance of direction issued by the concerned Magistrate upon the application under Section 156(3) Cr.P.C. made by opposite party No.2

4. The said F.I.R. was lodged stating therein that on 02.07.2020 when the victim was standing at Bus Stand Jamunaha at 10:00 A.M. waiting for Taxi/Bus, the appellant reached there, who insisted the victim to sit on his Motorcycle and he would drop her at her destination, thereafter, the opposite party No.2 sat on the Motorcycle of the appellant and went with him. It is further alleged that the appellant had taken her away to his house Chichadi Chauraha upon questioning by victim, the appellant told her that he will drop her after sometime. It is also alleged that the appellant shut the door of his house and snatched the mobile phone of the victim and committed rape on her, thereafter, at about 7:00 P.M. in the evening, she had been released from the house of the appellant and after reaching her house, she informed her mother-in-law about the whole incident and thereafter, she also informed about the incident to the Superintendent of Police, District- Shrawasti on 17.12.2020 through registered post.

ARGUMENTS OF LEARNED COUNSEL FOR THE APPELLANT

5. Learned Counsel for the appellant further submits that as per the contents of the F.I.R. it has been clearly stated that opposite party No.2 reported the alleged incident to the concerned police

station on the next day i.e. on 03.07.2020 but no heed was paid to her complaint, thereafter, the victim after a delay of more than five months, sent an application through a registered post dated 17.12.2020 to the Superintendent of Police, District- Shrawasti, stating therein all the facts about the alleged incident but no action was taken by the Superintendent of Police, District- Shrawasti. Being aggrieved by the inaction on the part of police authorities, the opposite party No.2 moved an application under Section 156(3) Cr.P.C. before concerned Magistrate and vide order dated 19.12.2020, the Magistrate directed the Police Station- Malhipur, District- Shrawasti to register the complaint made by the opposite party No.2 and proceed for investigation. The Investigating Officer visited the place of incident made a site plan and proceeded for further investigation.

6. Learned Counsel for the appellant further submitted that the victim in her statement recorded under Section 161 Cr.P.C. has re-titrated the same version of the F.I.R. but has slightly changed the version of the F.I.R. and stated that she went with the appellant with her children and the appellant locked her children and committed rape on her.

7. Learned Counsel for the appellant further submitted that after her statement under Section 161 Cr.P.C., she was sent for medical examination, where she denied for her internal or external medical examination.

8. Learned Counsel for the appellant further submitted that there are major contradictions in the statements of the victim recorded under Section 161 and 164 Cr.P.C. The victim in her statement recorded under Section 164 Cr.P.C. stated that when the appellant allowed her to leave his house, she came back home on Motorcycle of son of his uncle but later she stated that she reached home by walking alone.

9. Learned Counsel for the appellant further submitted that as per the statements of victim, the mobile phone used by the victim was snatched by the appellant and was made inoperative, and committed rape on her, but as per the CDR of the mobile phone, bearing Mobile No.8005164186 used by the victim on the date of incident i.e. 02.07.2020, the location and network connection of the said mobile number was found in Arriya (Bihar), where the husband of the victim is posted in Shashtra Seema Bal (S.S.B.).

10. Learned Counsel for the appellant further submitted when the victim was inquired about the contradictory statements made by her regarding use of mobile number on the date of incident, she stated that she was traumatized by the incident and the mobile number to which she was referring in her earlier statements i.e. Mobile No.8005164186 was in possession of her husband, who was posted in Bihar. Thus, it appears that victim is making false statements to prove the prosecution story.

11. It was further submitted that the appellant being aggrieved by the false prosecution initiated against him, intimated this issue to his department and the department after making an enquiry in the matter has held that the victim being influenced by her husband, namely-Jagram, who was also posted in the same department i.e. S.S.B. in which the appellant is posted has lodged a fake F.I.R. against the appellant, namely-Aditya Kumar, thus, after going through the findings, opinion and recommendations, the departmental committee has held that the Jagram, husband of the complainant is blameworthy for influencing his wife to lodge fake F.I.R. against the appellant.

12. Learned counsel for the appellant further submitted that thereafter, the appellant approached this Court for quashing of the F.I.R. by filing a Petition bearing Misc. Bench No.6179 of 2021 (Aditya Kumar vs. State of U.P. and Others) wherein, a Coordinate

Bench of this Court vide order dated 09.03.2021 granted interim protection to the appellant and directed that unless and until sufficient and credible evidence against the appellant for filing a police report under Section 173(2) Cr.P.C. for the offences alleged in the F.I.R. is found, he shall not be arrested in Case Crime No.439 of 2020.

13. Learned Counsel for the appellant further submitted that the Investigating Officer after completing the investigation submitted chargesheet dated 09.05.2021 bearing A-096 of 2021 against the appellant and case was numbered as 439 of 2020 under Section 376 I.P.C. and Section 3(2)(v) of SC/ST Act in a cursory manner and the court of Special Judge, SC/ST Act, Shrawasti vide order dated 29.10.2021 rejected the application A-3 of the appellant and summoned him under Section 376 I.P.C. and Section 3(2)(v) of SC/ST Act, which are impugned herein.

14. Learned Counsel for the appellant has submitted that there is no evidence available on record to show any involvement of the appellant in the alleged offence. He has further submitted that the impugned proceedings against the appellant are nothing but a sheer abuse of process of law and are manifestly unjust and illegal. The investigation has also been closed, and no further investigation is pending in the offence and the continuation of proceedings against the appellant would result only in his further harassment for alleged offences, which are not made out against him inasmuch as there is no evidence indicating his involvement in any manner for commission of alleged offences.

15. Learned counsel for the applicant has vehemently submitted that in the facts and circumstances of the case and after having satisfied that the ingredients of Sections 376 I.P.C. and section 3(2) (V) S.C. / S.T. Act are not made out against the appellant and the case falls within the parameters laid down by this Hon'ble Court in

the case of **Ch. Bhajan Lal v. State of Haryana 1992 Supp (1) SCC 335** which are required to be considered while quashing the criminal proceedings. He further argued that from the material available on record it is apparent that the appellant is not involved in the alleged offence, thus, he prays that it is a fit case for quashing of the impugned order dated 29-10-2021 and all the consequential proceedings of the case so far as the present appellant is concerned.

ARGUMENTS OF LEARNED COUNSEL FOR THE RESPONDENTS

16. Per contra, Ms. Shikha Sinha, the learned Additional Government Advocate for the State-opposite party No. 1 has submitted that learned court below has not committed any error or illegality in issuing summoning order dated 29-10-2021 against the appellant and the present appeal is liable to be dismissed as all the Factual aspects has been argued.

17. Sri Maneesh Kumar Singh, learned counsel for the complainant/ opposite no. 2 raised preliminary objection by stating that the present appeal under Section 14A(1) of Schedule Castes and Schedule Tribes (Prevention of Atrocities) Act 1989 is not maintainable and is liable to be dismissed.

18. Learned Counsel for the complainant/ opposite party No. 2 further stated that there are material concealment of facts on behalf of the appellant and the appellant has not come with clean hands before this Hon'ble Court.

19. Learned counsel for the complainant/ opposite party No. 2 further stated that the present application under section 482 Cr.P.C. has been filed by the applicant but the affidavit in support thereof is made by his attorney which is not maintainable. Learned Counsel for the opp. party No. 2 also repudiated the remaining submissions

made by the counsel for the applicant and prays that the present application filed by the applicant be dismissed.

20. It was further argued by learned counsel for the complainant/ opposite party No. 2 that the appellant has indulged in clever drafting by twisting material facts. Beside concealing relevant facts germane to the matters in issue, even vital material facts and documents have not been brought on record with due deliberation.

21. Learned counsel for the complainant / opposite party No. 2 has further placed reliance upon the judgment in the case of **Central Bureau of Investigation Vs Aryan Singh Etc 2023 SCC OnLine SC 379**, and relied on paras-10 and 12, wherein it has been observed as under:

“10. From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/ or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr. P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr. P.C., the Court has a very limited jurisdiction and is required to consider “whether any

sufficient material is available to proceed further against the accused for which the accused is required to be tried or not”.

12. In view of the above and for the reasons stated above, when the High Court has exceeded in its jurisdiction in quashing the entire criminal proceedings and applying the law laid down by this Court in catena of decisions on exercise of the powers at the stage of discharge and/or quashing the criminal proceedings, the impugned common judgment and order passed by the High Court quashing the criminal proceedings against the accused is unsustainable and the same deserves to be quashed and set aside.”

22. Learned counsel for the complainant / opposite party No. 2 has further placed reliance upon the judgment in the case of **Simranjit Singh Mann Vs Union of India: 2 AIR 1993 SC 280**, the Apex Court, held as under:—

“Ordinarily, the aggrieved party which is affected by any order has the right to seek redress by questioning the legal validity or correctness of the order, unless such party is a minor, an insane person or is suffering from any other disability which in law recognized as sufficient to permit any other person e.g. next friend, to move the Court on his behalf. It was also held that if a guardian or a next friend initiates proceedings for and on behalf of such a disabled aggrieved party, it is, in effect, proceedings initiated by the party aggrieved and not by a total stranger, who has no direct personal stake, in the outcome thereof. In the above mentioned case, a leader of a political party approached the Supreme Court under Article 32 of the Constitution of India, challenging the conviction and sentence of the assassins of Gen. Vaidya. The two convicts were alive but did not file any appeal against the conviction and sentence. The Apex Court held that the petitioner, in that case, had locus standi to invoke the jurisdiction under Article 32 of the Constitution.”

(9) *The plain reading of ratio of law as laid down in the aforesaid cases, clearly goes to reveal that it is only the accused person, against whom a criminal case has been registered or a criminal complaint, has been filed, can file a petition under Section 482 Cr.P.C. in the High Court, for quashing the complaint, the summoning order and/ or the subsequent proceedings, if any, and no third person can fight a proxy war on his behalf under the garb of public interest litigant. The aggrieved party, which is affected by an order, is required to seek redress of its grievance, by questioning the legal validity or correctness of the same. It is another thing, if the aggrieved party, is suffering from some disability, i.e., unless such party is a minor, or an insane person, or is suffering from any other disability, which, in law, is recognized as sufficient to permit any other person, e.g., next friend, to move the Court, on his behalf. On behalf of minor, or insane person, a guardian or a next friend, initiates proceedings, so as to challenge the legality and validity of the order, passed against him, to seek redressal of the grievance, as under law, such a person having disability, cannot be said to be competent, to file a petition, except through next friend or guardian. In the instant case, there is nothing on the record, that Amit Ahuja, petitioner, is suffering from any disability, recognized by the provisions, of law. He is an accused, in the aforesaid complaint. It is he, who is aggrieved against the complaint and the summoning order. It is he, who can challenge the same, on any ground which may be available to him, under the provisions of law. If, in criminal cases, until and unless a person, is allowed to fight the proxy war, then the very purpose of criminal justice system, shall be defeated. In the event, the Courts, would be mushroomed, by public interest litigants. In this view of the matter, the present petition, under Section 482 Cr.P.C. filed by the petitioner, through his attorney, is not maintainable. On this ground alone, the same is liable to be dismissed."*

23. The learned counsel for the complainant/ opposite party No. 2 further submitted that in spite of issuance of bailable and non bailable warrants appellant is deliberately and consciously evading the summons and is circumventing the process of law. In a catena

of decisions the Hon'ble Apex Court has held that criminal proceedings cannot be nipped in the bud.

OBSERVATIONS OF THE COURT

24. I have considered the rival submissions of the learned counsel for the parties and the judgments referred herein above and perused the material available on record and also the prayer made in the present appeal under Section 14A(1) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

25. The powers of the High Court to quash criminal proceedings in exercise of its jurisdiction is well known. The High Court may not enter into determination of the disputed questions of fact at the stage of its exercise of powers however, the Court may examine and take note of the facts and allegations in order to find out whether the impugned proceedings are in abuse of the process of the court and law and their continuance would result in miscarriage of justice or not.

26. In the present case the facts, as noted above, are not in dispute. The FIR and the charge-sheet discloses as to how and in what manner the appellant was responsible for commission of offence.

27. The question which arises for consideration in the present case is that whether the appellant was liable for any offence even if the allegations in the FIR and charge-sheet are taken on their face value to be correct in entirety. The Statute must contain provision fixing such a liability. Even for the said purpose, it would be obligatory on the part of the complainant and the investigating agency to make requisite allegations and collect evidence in support thereof which would attract provisions constituting liability.

28. The Hon'ble Supreme Court in the case of ***Pepsi Foods Ltd. v. Special Judicial Magistrate***, (1998) 5 SCC 749 has held that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set in motion as the matter of course for alleged offences and was pleased to observe in para-28 of the aforesaid judgment which reads as under:-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot 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 of the accused. The Magistrate has to carefully scrutinise 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."

29. In ***M/s. India Carat Pvt. Ltd. v. State of Karnataka*** and another : (1989) 2 SCC 132, the Hon'ble Court, after analyzing the provisions of the Code, referred to the decisions in *Abhinandan Jha v. Dinesh Mishra*: AIR 1968 SC 117 and *H.S. Bains v. State (UT of Chandigarh)* : (1980) 4 SCC 631 and, eventually was pleased to observe as under:

16. "The position is, therefore, now well settled that upon receipt of a police report under [Section 173\(2\)](#) a Magistrate is entitled

to take cognizance of an offence under [Section 190\(1\)\(b\)](#) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. [Section 190\(1\)\(b\)](#) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under [Section 190\(1\)\(b\)](#) and direct the issue of process to the accused.”

30. In the recent decision rendered by the Hon’ble Supreme Court in the case of ***Ramveer Upadhyay vs State of U.P.*** 2022 SCC ***Online SC 484*** and placed reliance on para 39 which read as under:

“39 In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not justify interference under Section 482 of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Attrocities Act. Whether the allegations are true or untrue, would have to be decided in the trial. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. The Complaint Case No. 19/2018 is not such a case which should be quashed at the inception itself without

further Trial. The High Court rightly dismissed the application under Section 482 of the Cr.P.C. ”

31. Thus, this Court is of the view that all the contentions raised by the appellant’s counsel relate to disputed questions of fact. The court has also been called upon to adjudge the testimonial worth of prosecution evidence and evaluate the same on the basis of various intricacies of factual details which have been touched upon by learned counsel. The veracity and credibility of material furnished on behalf of the prosecution has been questioned and false implication has been pleaded. In the process of invoking its inherent jurisdiction, this court cannot be persuaded to have a pre trial before the actual trial begins. The submissions made by the learned counsel call for adjudication on pure questions of fact which may be adequately adjudicated upon only by the trial court and while doing so even the submissions made on points of law can also be more appropriately gone into by the trial court in this case.

32. At this 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 quashing of charge sheet, summoning order and entire proceedings can also be done only if it does not disclose any offence or if there is any legal bar which prohibits the proceedings on its basis. 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 and make the position of law in this regard clear:-(i) **R.P. Kapoor Vs. State of Punjab, AIR 1960 S.C. 866**, (ii) **State of Haryana Vs. Bhajanlal, 1992 SCC (Crl.)426**, (iii) **State of Bihar Vs. P.P. Sharma, 1992 SCC (Crl.)192** and (iv) **Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.)283**.

33. 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. Hence the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing criminal proceedings to be continue. 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.*

34. In absence of any of the grounds recognized by the Apex Court which might justify the quashing of summoning order dated 29-10-2021 or consequential proceedings, **the prayer for quashing the same is refused**, as I do not see any abuse of the courts process either. The court below has been vested with sufficient powers to discharge the accused even before the stage to frame the charges comes, if for reasons to be recorded it considers the charge to be groundless.

35. In view of the above discussions and observations, this appeal filed by the appellant under Section 14A(1) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 for the relief claimed stands **disposed of**.

However, it is directed that the appellant shall appear before the concerned court below, within a period of three weeks from today and move an application claiming discharge, the concerned court shall after hearing the counsel for the parties decide the aforesaid discharge application, if filed, on merits in accordance

with law within a period which shall not exceed a period of three months from today without granting any unnecessary adjournment to either of the parties, unless there is some legal impediment or unless there is any order passed by the higher court staying the proceedings of the case.

36. It is further directed that till the disposal of the aforesaid discharge application, if filed, within the stipulated time given by this Court, no coercive action shall be taken against the appellant.

Order Date :- 18.01.2024

Piyush/-