

Neutral Citation No. - 2024:AHC-LKO:39403

Reserved on 13.05.2024

Delivered on 24.05.2024

Court No. - 27

Case :- APPLICATION U/S 482 No. - 4824 of 2009

Applicant :- Mohd. Jafar @ Syed Mohd. Imran Zaidi And Others

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

Counsel for Applicant :- Nadeem Murtaza

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Shamim Ahmed,J.

1. Heard Sri Nadeem Murtaza, learned counsel for the applicants and Sri Ashok Kumar Singh, learned A.G.A.-1 for the State-opposite party No.1.
2. As per Office report dated 23.07.2019 notice has been served on opposite party No.2, but till today none has appeared on behalf of the opposite party No.2.
3. The instant application has been moved on behalf of the applicants with a prayer to quash the proceedings of the case no. 3450/09, under Sections 153, 160 IPC, pending in the court of the Additional Judicial, III, Lucknow and the charge-sheet no. 55/09 dated 30.05.2009, under Section 153/160 IPC, filed by the police of police station Chowk, district Lucknow and summoning order dated 12.08.2009 passed by Chief Judicial Magistrate-III, Lucknow.
4. Learned counsel for the applicants submitted that the present case arises out of complaint preferred by the opposite party no.2. that the applicants are close friends and the resides in same vicinity within the territory of Police Station Chowk, District Lucknow and on

19.01.2009, the applicants were standing near their home, suddenly the opposite party no. 2 came and started shouting and abusing the applicants and asked the applicants to leave the place, the applicants replied that they are friends and are standing peacefully, however the applicants went back to their homes.

5. Learned counsel for the applicants further submitted that the applicants were surprised to know that a First Information Report has been registered against the applicants by the opposite party no. 2 at police station Chowk, Lucknow as FIR No. 23 of 2009 under Sections 153A and 160 IPC.

6. Learned counsel for the applicants further submitted that the allegations made in the aforesaid first information report are absolutely false and baseless and it is highly belated.

7. Learned counsel for the applicants further submitted that the statement under section 161 CrPC of the opposite party no. 2 was recorded wherein he has stated that it was a rumor that a rite has taken place. He further submits that the statement of one Khursheed Ansari was recorded wherein he has stated that the parties were scuffled with each other and no riot like situation was prevailing.

8. Learned counsel for the applicants further submitted that one Mohd. Ahmad has also given statement to the police and has stated that only arguments were taking place and no riot had taken place.

9. Learned counsel for the applicants further submitted that the statement under section 161 police constable Shahid Abbas was recorded who has also stated that no riot had taken place.

10. Learned counsel for the applicants further submitted that the investigating agency has acted in a most malafide and arbitrary

manner and despite the fact that no riot had taken place, the impugned charge sheet has been filed against the applicants, however, the charge-sheet was filed under sections 153A and 160 IPC.

11. Learned counsel for the applicants further submitted that the applicants are young persons, the applicant No. 1 is aged about nineteen years, the applicant No 2 is aged about twenty one years and the applicant No. 3 aged about eighteen years at the time of the incident.

12. Learned counsel for the applicants further submitted despite the fact that no offence is made out against the applicants, the learned Magistrate has summoned the applicants as accused, by means of the order dated 12.08.2009, which is a non speaking order.

13. Learned counsel for the applicants further submitted the State or the opposite party no. 2 cannot be said to be aggrieved even if it is admitted that any arguments had taken place between applicants are their friends and the offences punishable under sections 153 and 160 IPC are not at all made out against the applicants.

14. 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 summoning order dated 12.08.2009 is rightly passed and no interference by this Court is required in the instant matter.

15. After considering the argument advanced by learned counsel for the parties, this Court is of the view that 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.”

16. 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."

17. 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 (Cri.)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.**

18. 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.

19. 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.”

20. In other words in order to attract the provisions of section 153, three important ingredients have to be present.

1. The act must be illegal.

2. Such illegal act must be malignantly done, and

3. As a result of such illegal act, there must be a situation which may cause riot.

To constitute an offence under Section 153 IPC, there must be an illegal act involving malignant or derogatory remarks made with the intent to cause disorder or incite violence. The mere exchange of derogatory remarks, as alleged in this case, does not constitute an illegal act under Section 153 IPC.

21. In *Gadadhar Guru* case 1989 SCC Online Ori 130 it has been held by the Orissa High Court that the offence of affray in essence consists of three ingredients, the first being fighting by two or more persons, secondly, the fighting must take place in a public place and thirdly such fighting must also result in disturbance of the public peace. Only if such ingredients are satisfied, an offence of affray can be said to have occasioned for which the persons causing the same would be responsible. In a prosecution under Section 159 IPC, there must be positive evidence of public peace having been disturbed which would mean that by the action of the accused the even tempo of life of the public was disturbed resulting in affecting the peace and tranquillity of the locality.

22. Upon careful consideration of the facts and circumstances presented in this case, it is evident that the allegations made against the petitioners under Sections 153 and 160 of the Indian Penal Code (IPC) are not substantiated by the evidence on record. The statements recorded under Section 161 CrPC from various witnesses, including Khursheed Ansari, Mohd. Nadeem, Mohd. Ahmad, police constable Shahid Abbas, and others, unanimously indicate that no riotous

situation or unlawful assembly occurred, and at most, a verbal argument took place.

23. In the absence of credible evidence to support the charges, the incident described falls more appropriately under Sections 107 and 116 of the CrPC, which pertain to preventive measures for maintaining peace and security, rather than Sections 153 and 160 IPC, which deal with promoting enmity and committing affray respectively. The filing of the charge-sheet under Sections 153 and 160 IPC thus appears to be arbitrary and an abuse of the process of law.

24. Absence of credible evidence to support the charges, the filing of the charge-sheet appears to be arbitrary and an abuse of the process of law. The applicants, being young individuals with no prior criminal history and described as peace-loving citizens, should not be subjected to the rigors of a criminal trial based on such unfounded accusations.

Therefore, the Magistrate ought not to have issued summons against the applicants when no offence was disclosed even on the basis of the averments made in the complaint.

Thus, this court is of the view that no offence under 153 and 160 I.P.C. is made out.

25. 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 eye of law and resultantly it is not sustainable.

Thus, in view of the law laid down by the Hon'ble Apex Court in the above referred judgment and the facts and circumstances, as narrated above, the impugned summoning order dated 12.08.2009 passed by by Chief Judicial Magistrate-III, Lucknow and the charge-sheet no. 55/09 dated 30.05.2009, under Section 153/160 IPC, filed against the applicant by the police of police station Chowk, district

Lucknow and the **entire proceedings** of the case no. 3450/09, under Sections 153, 160 IPC, pending in the court of the Additional Judicial, III, Lucknow are liable to be **quashed**.

26. Accordingly, keeping in view the discussions/observations and judgments of Hon'ble the Apex Court referred above and the facts and circumstances, the impugned summoning order dated 12.08.2009 passed by by Chief Judicial Magistrate-III, Lucknow and the charge-sheet no. 55/09 dated 30.05.2009, under Section 153/160 IPC, filed against the police of police station Chowk, district Lucknow and the entire proceedings of the case no. 3450/09, under Sections 153, 160 IPC, pending in the court of the Additional Judicial, III, Lucknow are hereby quashed.

27. For the reasons discussed above, the instant application filed under Section 482 Cr.P.C. is **allowed** in respect of the instant applicants, namely, Mohd. Jafar alias Syed Mohd. Imra Zaidi, Siraj alias Mohd. Ahsan Ahmad and Zeeshan.

28. Learned Senior Registrar of this Court is directed to transmit a copy of this order to the trial court concerned for its necessary compliance.

29. No order as to costs.

Order Date :- 24.05.2024

Arvind

(Shamim Ahmed,J)