

Court No. - 27

Case :- APPLICATION U/S 482 No. - 3802 of 2019

Applicant :- Sagar Jotwani

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

Counsel for Applicant :- Ankit Srivastava

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Shamim Ahmed,J.

1. Heard Shri Ankit Srivastava, learned Counsel for the applicant, Shri Rajeev Kumar Verma, learned A.G.A. for the State-opposite party and perused the entire material placed on record.

2. The present application under Section 482 Cr.P.C. has been filed on behalf of the applicant, namely-Sagar Jotwani seeking quashing of the charge sheet dated 24.12.2017 submitted in Case Crime No.487/2017 before the Court of Chief Judicial Magistrate, Lucknow under Section 79 of the Juvenile Justice Care and Protection of Children Act, 2015 and summoning order dated 13.09.2018 passed by Court of Chief Judicial Magistrate, Lucknow in Criminal Case No.54326/2018 whereby cognizance has been taken and the applicant has been summoned under Section 370(5) I.P.C. and Section 79 of Juvenile Justice Care and Protection of Children Act, 2015 and bailable warrant dated 15.03.2019 passed in the aforesaid case against the applicant.

3. Learned Counsel for the applicant submits that the applicant is Sole Proprietor of the proprietorship known as 'Kumar Dalmoth Factory.' having its registered address at Annaura Gaon, Amausi Road, Lucknow. He further submits that being the proprietor of the aforesaid proprietorship, the applicant had no direct role to play in the appointment/ selection of the non-managerial staff.

4. Learned Counsel for the applicant further submits that the officials of the factory in order to engage the workers contacted one Yashpal Singh alias Papu, the said Yashpal Singh who happens to be a labour thekedar thereafter sent some 10-15 boys in the factory of the applicant.

5. Learned Counsel for the applicant further submits that when the officials of the factory asked about the particulars & the ids of the labours in order to ascertain the whereabouts of the labours & also about their age, the said Yashpal Singh informed that he is having the ids of the labours & gave an affidavit to the effect that he shall provide the same whenever it is needed. Meanwhile on 04.8.2017 an inspection was carried out & it was alleged that 16 boys were found in the aforesaid factory that were employed as labour & were not adults.

6. Learned Counsel for the applicant further submits that an FIR was also lodged at Police Station Sarojini Nagar District Lucknow under Section 370(5) IPC &

Section & under Section 79 of the Juvenile Justice Care and Protection of Children Act, 2015. He further submits that subsequently an investigation was conducted however without there being any independent or cogent evidence the investigation agency submitted the Charge Sheet dated 05.8.2017 in Case Crime No. 487/2017 before the Court of Chief Judicial Magistrate Lucknow under Section 79 of the Juvenile Justice Care and Protection of Children Act, 2015.

7. Learned Counsel for the applicant further submits that there is absolutely no evidence against the applicant so as to say that he has committed any offence under Section 79 of the Juvenile Justice Care and Protection of Children Act, 2015. Section 79 of the Juvenile Justice Care and Protection of Children Act, 2015 is reproduced hereinunder:

"S.79 Exploitation of a child employee.

Notwithstanding anything contained

in any law for the time being in force, whoever ostensibly engages a child and keeps him in bondage for the purpose of employment or withholds his earnings or uses such earning for his own purposes shall be punishable with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine of one lakh rupees.

Explanation.-For the purposes of this section, the term "employment" shall also include selling goods and services, and entertainment in public places for economic gain."

8. Learned Counsel for the applicant further submits that there is no evidence so as to say that the applicant has engaged a child and kept him in bondage for the purpose of employment or has withheld his earnings or used such earning for his own purposes. However learned Trial Court without appreciating the material evidences on record & without appreciating the scope of Section 79 of the Juvenile Justice Care and Protection of Children Act, 2015 took cognizance of the offences under Section 370(5) IPC & under Section 79 of the Juvenile Justice Care and Protection of Children Act, 2015 and summoned the applicant vide order dated 13.8.2019.

9. Learned Counsel for the applicant further submits that the learned trial court has summoned the applicant under Section 370(5) IPC & under Section 79 of the Juvenile Justice Care and Protection of Children Act, 2015 whereas the charge sheet was submitted only under Section 79 of the Juvenile Justice Care And Protection Of Children Act, 2015 but while passing the order dated 13.9.2018 no reason has been recorded by the learned Court of Chief Judicial Magistrate Lucknow.

10. Learned Counsel for the applicant further submits that moreover the aforesaid impugned order dated 13.09.2018 is neither speaking one nor has any reason been assigned by the learned trial court. Admittedly it is a fairly settled principle of law that the reason is the life of law. It is that filament that injects soul to the order, absence of analysis not only evinces non application of mind but mummifies the core spirit of the order. However the perusal of the aforesaid

order would reveal to the Hon'ble Court that the impugned order is a non speaking one and is also un-reasoned one.

11. Per contra, learned A.G.A. for the State-opposite party has vehemently opposed the contentions made by learned Counsel for the applicant and submits that there was ample evidence against the applicant, who was present at the railway crossing at the time of incident and the police party in a very cautious manner nabbed him red handed, while he was creating nuisance in a public place and was passing obscene comments on the girls and ladies. Thereafter, the police has thoroughly conducted the inquiry against the applicant and has filed a charge sheet against him considering the material on record, thus, he submits that the trial court has correctly took the cognizance of the charge sheet and has rightly summoned the applicant to face trial in the aforesaid case. He further submits that no interference by this Court is required in the matter and the present application being devoid of merit and substance is liable to rejected.

12. I have heard learned Counsel for the parties.

13. On careful perusal of averments made in this application under Section 482 Cr.P.C. as well as after hearing the learned Counsel for the parties, the factual matrix discloses that the opposite party No.2 alongwith his other associates lodged an F.I.R. against the applicant alleging therein that the applicant was running a factory in which sixteen minor boys were working as laborers but it has been alleged by learned Counsel for the applicant that the applicant has nothing to do with the employment of non managerial staff, thus, he has no concern with the minor boys who were allegedly deployed in his factory. Further, there also appears force in the argument of learned Counsel for the applicant that the officials of the factory in order to engage the workers contacted one Yashpal Singh alias Papu, the said Yashpal Singh who happens to be a labour thekedar sent 10-15 boys in the factory of the applicant and when the officials of the factory asked about the particulars & the ids of the labours in order to ascertain the whereabouts of the labours & also about their age, the said Yashpal Singh informed that he is having the ids of the labours & gave an affidavit to the effect that he shall provide the same whenever it is needed. Meanwhile on 04.8.2017 an inspection was carried out & it was alleged that 16 boys were found in the aforesaid factory that were employed as labour & were not adults, there also appears force in the argument of learned Counsel for the applicant that there is absolutely no evidence against the applicant so as to say that he has committed any offence under Section 79 of the Juvenile Justice Care and Protection of Children Act, 2015. Further, the trial court has failed to appreciate the fact that while filing the charge sheet, the Investigating officer has failed to comply with the mandatory provisions of criminal law and has passed the impugned summoning order 13.09.2018, which is nothing but an abuse of process of law.

14. Further the Hon'ble Supreme Court of India in the case ***Inder Mohan Goswami v. State of Uttaranchal (2007)12 SCC 1*** has held that it would be relevant to keep into mind the scope and ambit of section 482 Cr.PC and circumstances under which the extra ordinary power of the court inherent

therein as provisioned in the said section of the Cr.P.C. can be exercised, para 23 is being quoted here under:-

"23. This court in a number of cases has laid down the scope and ambit of courts powers under section 482 Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under section 482 Cr.P.C. can be exercised:

(i) to give effect to an order under the Code;

(ii) to prevent abuse of the process of court, and

(iii) to otherwise secure the ends of justice."

15. Further 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, the Hon'ble Supreme Court of India in the case of ***Pepsi Foods Ltd. v. Judicial Magistrate*** reported in **(1998) 5 SCC 749** has been pleased to observe paragraph No.28, which is reproduced hereinunder:-

"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."

17. Further, the Hon'ble Supreme Court of India in the case of ***Mehmood UL Rehman v. Khazir Mohammad Tunda and Others*** reported in **(2015) 12 SCC 420** has been pleased to observe paragraph No.20, which is reproduced hereinunder:-

"20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter."

18. 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."

19. 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.**

20. 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 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.

21. Thus, in view of the law laid down by the Hon'ble Apex Court and in light of the observations and discussions made above and keeping view the facts and

circumstances of the case, and from the perusal of the record, the impugned charge sheet dated 24.12.2017 submitted in Case Crime No.487/2017 before the Court of Chief Judicial Magistrate, Lucknow under Section 79 of the Juvenile Justice Care and Protection of Children Act, 2015 and summoning order dated 13.09.2018 passed by Court of Chief Judicial Magistrate, Lucknow in Criminal Case No.54326/2018 whereby cognizance has been taken and the applicant has been summoned under Section 370(5) I.P.C. and Section 79 of Juvenile Justice Care and Protection of Children Act, 2015 and bailable warrant dated 15.03.2019 passed in the aforesaid case against the applicant.

22. Accordingly, the impugned charge sheet dated 24.12.2017 submitted in Case Crime No.487/2017 before the Court of Chief Judicial Magistrate, Lucknow under Section 79 of the Juvenile Justice Care and Protection of Children Act, 2015 and summoning order dated 13.09.2018 passed by Court of Chief Judicial Magistrate, Lucknow in Criminal Case No.54326/2018 whereby cognizance has been taken and the applicant has been summoned under Section 370(5) I.P.C. and Section 79 of Juvenile Justice Care and Protection of Children Act, 2015 and bailable warrant dated 15.03.2019 passed in the aforesaid case against the applicant are hereby ***set aside*** and ***reversed***.

23. For the reasons discussed above, the instant application under Section 482 Cr.P.C. is ***allowed*** in respect of the instant applicant, namely-Sagar Jotwani.

Order Date :- 15.5.2024

Piyush/-