

Court No. - 13

Case :- APPLICATION U/S 482 No. - 6869 of 2024

Applicant :- Rajan Verma And 2 Others

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

Counsel for Applicant :- Mahendra Pratap Verma

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

1. Heard learned counsel for the applicants, learned AGA for the State of U.P. and gone through the record.

2. The present application under Section 482 Cr.P.C. read with Section 528 Bharatiya Nagrik Suraksha Sanhita, 2023 (in short "BNSS") has been filed with the following prayer:-

"To quash/set-aside the entire proceedings of criminal case no. 373/2017, State Vs. Rajan and others, arising out of case crime no. 0373/2017, U/s 376, 511, 506, I.P.C., police station- Gosainganj, District-Lucknow, pending in the court of Additional Chief Judicial Magistrate VI, Lucknow and also to quash the chargesheet dated 06.11.2017 and cognizance order dated 21.12.2018 along with summoning order dated 16.03.2024, against the applicants under the aforesaid section of BNSS, as contained in ANNEXURE NOS. 1 & 2 respectively."

3. Earlier, the applicants had approached this Court for the same relief on the same grounds by filing an Application U/S 482/378/407 No.4464 of 2021 and this Court on the limited grounds interfered in the matter and quashed only the summoning order vide order dated 25.11.2021 and remanded the matter back to the trial Court to pass a fresh order. The aforesaid order dated 25.11.2021 is extracted hereinunder:-

"Heard learned counsel for petitioners and learned Additional Government Advocate for the State.

In view of the proposed order, notice to opposite party no. 2 is hereby dispensed with.

By means of this petition filed under Section 482 Cr.P.C., the petitioners have sought quashing of the entire proceedings of Criminal Case No. 373 of 2017; (State vs. Rajan and others) arising out of Case Crime No. 0373 of 2017, under Sections 376, 511, 506 I.P.C., Police Station-Gosaiganj, District-Lucknow, pending in the court of learned Additional Chief Judicial Magistrate VI, District-Lucknow as well as impugned Charge-sheet dated 06.11.2017 submitted against the petitioners and the impugned summoning order dated 21.12.2018.

The main ground to assail the aforesaid order in the present proceedings is that the learned Magistrate has taken cognizance on the printed proforma which is being discouraged by this Court in catena of cases.

Learned counsel for the petitioners has drawn attention of this Court towards judgment dated 09.08.2021 passed in Application u/s 482 Cr.P.C. No. 11334 of 2021; Pankaj Jaiswal vs. State of U.P. and others wherein the learned AGA had argued before the Court that on the basis of material available on record, cognizable offence against the said applicant is made out, therefore, the petition may be dismissed, but this Court has observed that since the learned Magistrate has taken cognizance on the printed proforma, therefore, the said cognizance order is not liable to sustain.

The operative portion of the judgment dated 9.8.2021 is reproduced herein below:

"Let a copy of this order be placed before the learned Registrar General of this Court within a week from today and the learned Registrar General is directed to issue a circular/ memorandum in accordance with law to all the District Judges in the State of Uttar Pradesh intimating them to inform all the Judicial Officer not to use "Printed Proforma" in passing the Judicial Orders in view of the observations made herein above.

The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad or certified copy issued from the Registry of the High Court, Allahabad.

The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing."

In the present case, the learned court below has taken cognizance on the Printed Proforma and learned Additional Government Advocate has submitted same argument that on the basis of material available on record cognizable offence is made out but considering the decision of this Court in re: Pankaj Jaiswal (supra), I hereby provide that benefit of the order passed in re:Pankaj Jaiswal (supra) to the present petitioners.

Accordingly, the present petition under Section 482 Cr.P.C. succeeds and is allowed. The summoning order dated 21.12.2018 passed by the Additional Chief

Judicial Magistrate VI, District-Lucknow in Criminal Case No. 373 of 2017; (State vs. Rajan and others) arising out of Case Crime No. 0373 of 2017, under Sections 376, 511, 506 I.P.C., Police Station-Gosaiganj, District-Lucknow, is hereby quashed. The learned Trial Court is directed to decide afresh the issue for taking cognizance with promptness and summoning the petitioners and pass appropriate orders strictly in accordance with law keeping in view the observations made by this Court."

4. Learned A.G.A. says that present application in the light of ***Bhisham Lal Verma Vs. State of Uttar Pradesh and another (2023) SCC OnLine SC 1399*** is not maintainable. The relevant para are extracted herein-under:-

"6. Long thereafter, the petitioner filed his first petition under Section 482 Cr.P.C., viz., Criminal Misc. Application No. 8465 of 2018, before the Allahabad High Court. Therein, he chose to challenge only the Government's sanction order dated 03.12.2013. The State opposed the application, pointing out that a challenge to the sanction could be made before the Trial Court. Thereupon, the petitioner's counsel sought liberty to approach the Trial Court by way of an appropriate application challenging the sanction. Accepting that plea, the High Court disposed of the application, vide order dated 15.12.2020, granting liberty to the petitioner to approach the Trial Court and challenge the sanction order. Significantly, at the time of filing of this first petition under Section 482 Cr.P.C., the charge sheet was very much on record and the learned Sessions Judge, Rampur, had already taken cognizance.

7. However, it was only in the year 2022 that the petitioner felt inspired to file a second petition under Section 482 Cr.P.C., viz., Criminal Misc. Application No. 2014 of 2022. His prayers therein were to quash the charge sheet dated 30.04.2015; the cognizance order dated 12.06.2015; and the proceedings in Special Case No. 19 of 2016, insofar as he was concerned. This application was dismissed by the Allahabad High Court, vide order dated 20.02.2023. Therein, the High Court noted that the petitioner had earlier filed Criminal Misc. Application No. 8465 of 2018 under Section 482 Cr.P.C. with a limited prayer - to quash the sanction order dated 30.12.2013. Holding that it was not open to the petitioner to go on challenging the proceedings one by one and as he had not felt aggrieved by the charge sheet or the order of cognizance when he had filed the first petition under Section 482 Cr.P.C., the High Court concluded that the subsequent petition challenging the same would not be maintainable and dismissed the application. It is against this order that the petitioner approached this Court by way of the present case.

8. On behalf of the petitioner, Mr. Pradeep Kumar Singh Baghel, learned senior counsel, would argue that a second petition is maintainable under Section 482 Cr.P.C.. He relied on the judgment of this Court in Superintendent and Remembrancer of Legal Affairs, West Bengal vs. Mohan Singh and others¹. Therein, it was held that a subsequent application under Section 561-A of the Code of Criminal Procedure, 1898, presently Section 482 Cr.P.C, would be maintainable in changed circumstances. It was affirmed that a subsequent

application, which is not a (1975) 3 SCC 706 repeat application squarely on the same facts and circumstances, would be maintainable. To the same effect was the more recent decision of this Court in *Anil Khadkiwala vs. State (Government of NCT of Delhi)* and another². Earlier, in *S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and another* ³, this Court held that when the first petition under Section 482 Cr.P.C was withdrawn with liberty to avail remedies, if any, available in law, the High Court would not be denuded of its inherent jurisdiction under Section 482 Cr.P.C. on being petitioned again and the principle of *res judicata* would not stand attracted. Again, in *Vinod Kumar, IAS. vs. Union of India and others*⁴, a 3-Judge Bench of this Court observed that dismissal of an earlier petition under Section 482 Cr.P.C would not bar filing of a subsequent petition thereunder in case the facts so justify.

9. Mr. S. Nagamuthu, learned amicus curiae, would however point out that entertainment of the second petition in *Mohan Singh* (supra) was held permissible as the circumstances obtaining at the time of the subsequent petition were clearly different from what they were at the time of the earlier one and that was the distinguishing factor which saved the second petition. He would further point out that, in *Simrikhia vs. Dolley* (2019) 17 SCC 294 (2007) 4 SCC 70 Writ Petition No. 255 of 2021, decided on 29.06.2021 = 2021 SCC OnLine SC 559 Mukherjee and Chhabi Mukherjee and another ⁵, this Court cautioned that the inherent jurisdiction under Section 482 Cr.P.C cannot be invoked to override the bar of review under Section 362 Cr.P.C. Reference was made to *Sooraj Devi vs. Pyare Lal and another* ⁶ which held that the inherent power of the Court could not be exercised for doing that which is specifically prohibited by the Code of Criminal Procedure, 1973. He also drew our attention to *R. Annapurna vs. Ramadugu Anantha Krishna Sastry and others*⁷, wherein a quash petition under Section 482 Cr.P.C. was dismissed on 28.01.1995 and without mentioning the same, another petition was filed under Section 482 Cr.P.C. with a similar prayer. Noting that the second petition was not made on the strength of anything which had developed after 28.01.1995 but only on the facts which subsisted prior to that date, this Court held that the second petition was not maintainable, as the High Court did not have the power to upset the order dated 28.01.1995 which had attained finality.

10. In *S. Madan Kumar vs. K. Arjunan* ⁸, the Madras High Court observed that a person who invokes Section 482 Cr.P.C. should honestly come before the Court raising all the pleas available to him at that point of (1990) 2 SCC 437 (1981) 1 SCC 500 (2002) 10 SCC 401 (2006) 1 MWN (Cri) DCC 1 = 2006 SCC Online Mad 94 time and he is not supposed to approach the Court with instalment pleas. It was further observed that there may be a change of circumstances during the course of criminal proceedings which would give scope for the person aggrieved to invoke the inherent jurisdiction of the Court, but when he is posted with all the facts and circumstances of a case, he cannot withhold part of it for the purpose of filing yet another petition seeking the same relief.

11. We are in complete agreement with these observations of the Madras High Court. Though it is clear that there can be no blanket rule that a second petition under Section 482 Cr.P.C. would not lie in any situation and it would depend upon

the facts and circumstances of the individual case, it is not open to a person aggrieved to raise one plea after the other, by invoking the jurisdiction of the High Court under Section 482 Cr.P.C., though all such pleas were very much available even at the first instance. Permitting the filing of successive petitions under Section 482 Cr.P.C. ignoring this principle would enable an ingenious accused to effectively stall the proceedings against him to suit his own interest and convenience, by filing one petition after another under Section 482 Cr.P.C., irrespective of when the cause therefor arose. Such abuse of process cannot be permitted."

5. He also says that the statement of the victim recorded under Sections 161 and 164 Cr.P.C. supports the story of the prosecution and so far as discrepancy, if any, in the story of the prosecution concerned, the same would be considered at the stage of trial. The reference has been made to the judgment passed by the Hon'ble Apex Court in the case of ***Hazrat Deen vs. State of Uttar Pradesh and Another; reported in 2022 SCC OnLine SC 1781***, wherein it is held that discrepancy in the FIR and the statement under Section 164 Cr.P.C. may be a defense however the discrepancies cannot be a ground for discharge without initiation of trial. The judgment referred is extracted hereunder:-

"1. In this special leave petition the petitioner has challenged an order dated 27.10.2021 passed by the High Court of Judicature at Allahabad, Lucknow dismissing the criminal revision application by the petitioner being CRLR No. 259/2021.

2. The aforesaid criminal revisional application was filed challenging an order passed by the learned Addl. Sessions Judge/Special Judge (POCSO Act), Bahraich, hereinafter referred to as the Trial Court, dismissing the application of the petitioner for discharge.

3. The facts giving rise to these proceedings are obnoxious. The prosecutrix is the daughter of the petitioner, only 19 years of age. It is alleged that she had been sexually abused.

4. In the petition, it is stated that the charge sheet was filed implicating the petitioner of offences under various sections of the Penal Code, 1860 (IPC) including Sections 354 and 376 thereof as also Sections 5 and 6 of the Protection of Children from Sexual Offences Act, 2012, hereinafter referred to as the "POCSO Act". Learned counsel appearing on behalf of the petitioner emphatically argued that the POCSO Act came into force only on 14.11.2012. The incident alleged pertain to the period prior to the enforcement of the POCSO Act.

5. The petitioner has not been charged only under the POCSO Act. Even assuming that the petitioner could not have been charged under the POCSO Act, the petitioner has been charged under various provisions of the IPC which were

admittedly in force on the date of the alleged offence. The learned counsel for the petitioner emphatically argued that the FIR does not disclose offence under Section 376 of the IPC. The FIR is the initial document. In her statement given by the prosecutrix under Section 164 of the Code of Criminal Procedure (CrPC) after the prosecutrix attained majority, she categorically made statements which tantamount to offence under Section 376 of the IPC.

6. Discrepancies between the FIR and any subsequent statement under Section 164 of the CrPC may be a defence. However, the discrepancies cannot be a ground for discharge without initiation of trial.

7. There is no infirmity in the order of the High Court rejecting the criminal revisional application.

8. The special leave petition is, accordingly, dismissed.

9. It is, however, made absolutely clear that the observations made above are not to be construed as any finding of this Court that there has been no offence under the POCSO Act or that the prosecutrix has not been abused after commencement of the POCSO Act.

10. Pending applications, if any, stand disposed of accordingly."

6. Upon due consideration of the aforesaid including the statement of the victim as also the fact that victim of sexual abuse would not always be in a position to state the entire facts at first instance on account of social structure and F.I.R. should not be treated as encyclopedia, this Court find no force in the present application and accordingly, the present application is **rejected**.

Order Date :- 5.8.2024

Gurpreet Singh