

Neutral Citation No. - 2024:AHC-LKO:35718

Court No. - 27

Case :- APPLICATION U/S 482 No. - 6338 of 2022

Applicant :- Sushila Singh And 6 Others

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. (Home),
Lko. And Another

Counsel for Applicant :- S M Singh Royekwar, Dr. Deepti Singh

Counsel for Opposite Party :- G.A., M. A. Mishra, Maneesh Kumar
Singh, Navita Sharma, Santosh Kumar Tirpathi, Surekha Patel

Hon'ble Shamim Ahmed, J.

1. Heard Sri S.M. Singh Royekwar, learned counsel for the applicants and Sri Santosh Kumar Tirpathi, learned counsel for the opposite party No.2 and Ashok Kumar Singh, learned A.G.A.-1 for the State.

2. By means of this petition filed under Section 482 Cr.P.C., the applicants have prayed for quashing of the entire proceedings of Criminal Case arising out of F.I.R. No. 407/2021, Police Station Gosaiganj, District Lucknow, pending before the court of Additional Chief Judicial Magistrate, Court No.30, Lucknow and charge-sheet dated 28.07.2022 and summoning order dated 11.08.2022, whereby the learned Magistrate has taken cognizance and summoned the applicant Nos. 1 to 3 under Sections 452, 504, 506, 406, 420, 498A I.P.C. and applicant Nos. 4 to 7 under Sections 452, 354A, 504, 506, 354, 354D, 406, 420, 498A, 509 I.P.C. to face the trial.

3. Learned counsel for the applicants submits that vide order dated 14.07.2023 the matter was referred to the Mediation and Conciliation Centre, Allahabad High Court, Lucknow for settlement

between the parties. The order dated 14.07.2023 is being reproduced here-in-below:

"1. Supplementary affidavit filed by learned counsel for the applicants is taken on record.

2. Heard learned counsel for the applicants and learned counsel for the private respondent as well as learned AGA.

3. Learned counsel for applicants moved an application for exemption from personal appearance of applicant no.1/Sushila Singh and applicant no.3/Babbi Singh along with reasons of non-appearance mentioned in the affidavit in support of application, therefore, the said application is allowed.

4. Accordingly, personal appearance of applicant nos. 1 & 3 before this Court is exempted.

5. In pursuance of earlier order dated 03.07.2023, Applicant No.2/Swabhi Singh, applicant No.4/Ramesh Pratap Singh, applicant No.5/Vipul Pratap Singh, applicant No.6/Devesh Pratap Singh, applicant No.7/Avanish Kumar Singh and private respondent/Rashmi Singh are present today before this Court.

6. Learned counsels for the parties jointly submit that there is possibility of settlement between the parties, therefore, the matter may be sent for mediation in Mediation Centre of this Court.

7. List this case on 24.07.2023 before Mediation Centre of this Court.

8. On the next date, applicants as well as private respondent are directed to appear before Mediation Centre along with their respective original IDs.

9. It is expected from In-charge of Mediation Centre of this Court that she will look into the matter and conduct the mediation proceeding.

10. List after the conclusion of mediation proceedings.

11. Interim order, granted earlier, shall continue till the next date of listing."

As per the report of the Mediator of Mediation and Conciliation Centre, Allahabad High Court, Lucknow, the Mediation proceedings have been failed.

4. Learned counsel for the applicants further submits that thereafter, this case was listed before this Court and vide order dated 22.04.2024 this Court had passed the following order:

"Heard Sri S M Singh Royekwar, learned counsel for the applicants as well as Sri Santosh Kumar Tirpathi, learned counsel for the opposite party No.2 and Shri Ajay Kumar Agnihotri, learned A.G.A. for the State and perused the record.

Learned counsel for the parties submit that the matter is totally a family dispute in respect of some property and earlier the matter has been referred by this Court to the Mediation and Conciliation Centre of this Court but due to certain confusion, the mediation between the parties could not arrive at its end and ultimately it failed. Learned counsel for the parties further submit that one more attempt of mediation between the parties may be taken by this Court to settle the dispute amicably as the dispute is very minor and can be easily settled.

Shri Ajay Kumar Agnihotri, learned A.G.A. also made an agreement with this proposal given by learned counsel for the parties and he submits that one more chance may be taken by this Court for settlement between the parties as the dispute is in between the father-in-law, mother-in-law and other family members with the daughter-in-law (opposite party No.2), who is the widow of the elder son of the applicant No.4-Ramesh Pratap Singh.

After considering the arguments as advanced by the learned counsel for the parties and after perusal of the order passed by this Court as well as averments made in the affidavit filed in support of this application and the counter affidavit, this Court also deems it fit and proper to have one more chance of mediation between the parties before this Court regarding settlement of their dispute as the matter pertains to family dispute.

Accordingly, Shri S M Singh Royekwar, learned counsel for the applicants as well as Shri Santosh Kumar Tirpathi, learned counsel for the opposite party No.2 are directed to inform their clients i.e. applicant No.4-Ramesh Pratap Singh (father-in-law of opposite party No.2), applicant No.5-Vipul Pratap Singh (brother-in-law of opposite party No.2) and opposite party No.2 to appear before this Court in person on 07.05.2024 to explore the possibilities of amicable settlement.

Interim order, granted earlier, shall continue till the next date of listing."

5. Today, in compliance of order dated 22.04.2024 applicant No.4-Ramesh Pratap Singh (father-in-law of opposite party No.2), applicant No.5-Vipul Pratap Singh (brother-in-law of opposite party No.2) and opposite party No.2-Smt. Rashmi Singh are present before this Court and they have been identified by their respective counsels.

6. After long argument, the Court tried to get the matter settled. Both the counsels and learned A.G.A. tried to get the matter settled, but the parties are not ready to settle the dispute amicably and are contesting their case, on each and every count, on civil and criminal both, thus in view of the Court, there is no chance to resolve the matter through process of mediation, thus the court proceed to heard the case on merit.

7. Learned counsel for the applicants submits that no offence against the applicants are disclosed and the present prosecution has been instituted with a malafide intention for the purposes of harassment.

8. Learned counsel for the applicants further submits that the applicant No.1 is mother-in-law, applicant No.2 is nanad, applicant No.3 is devrani, applicant No.4 is father-in-law, applicant No.5 is dewar, applicant Nos. 6 and 7 are cousin dewar of opposite party No.2 (Smt. Rashmi Singh).

9. Learned counsel for the applicants further submits that the marriage between Vipin Kumar Singh, husband of the opposite party No.2 (Smt. Rashmi Singh) and opposite party No.2 was solemnized on 09.12.2005 as per Hindu rites and rituals at Jaunpur and due to

their wedlock one baby girl was born on 01.02.2012, namely, Nayan Singh. Unfortunately, husband of the opposite party No.2, Vipin Kumar Singh died on 22.04.2021 from Corona Virus at SGPGI Hospital.

10. Learned counsel for the applicants further submits that Bharat Petroleum Corporation Limited (BPCL) published an advertisement dated 08.06.2004 inviting offer for setting up a retail outlets at different locations amongst them one was at Gosainganj NH-56, Lucknow and in the year 2004 elder son of applicant No.4, Vipin Kumar Singh (husband of opposite party No.2) applied for setting up the retail outlet of the BPCL and deposited the security money.

11. Learned counsel for the applicants further submits that after the allotment of the retail outlet by the BPCL to Vipin Kumar Singh in Year 2005 and some fund was arranged by applicant No. 4 also. The retail outlet allotted by the BPCL allotted to Vipin Kumar Singh was running under the name and style of M/s Sankalp Filling Station and there was no problem in the family, every thing was going all right.

12. Learned counsel for the applicants further submits that however, during Covid-19 pandemic, on 22.04.2021, Vipin Kumar Singh succumbed to Corona Virus at SGPGI Hospital and from the sudden death of Late Vipin Kumar Singh the entire business of retail outlet came under a great stress and on the very next day of death of Late Vipin Kumar Singh i.e. on 23.04.2021, opposite party no.2 wife of Late Vipin Kumar Singh was appointed as a temporary dealer by the BPCL of the retail outlet which was in the name of Late Vipin Kumar Singh and the land bearing Gata No.475 'Gha', 476, 472, 474 'kha', 475 'cha', which was recorded in the name of Late Vipin Kumar Singh were vide order dated 18.06.2021 passed by the Revenue Inspector, Gosaiganj. ordered to be recorded in the name of opposite party no.2

and child Nayan Singh. In pursuance of order dated 18.06.2021 passed by the Revenue Inspector the name of the opposite party no.2 was recorded in the khatauni on 20.07.2021 and after recording of the name of opposite party no.2 against the land on which the retail outlet was situated, the BPCL vide its letter dated 29.06.2021 granted in principal approval for reconstitution of the retail outlet dealership wherein the opposite party no.2 was made the dealer in place of her husband Late Vipin Kumar Singh.

13. Learned counsel for the applicants further submits that on 11.08.2021 the opposite party No.2 filed a Writ Petition bearing No. 17755 (MB)/2021 titled as 'Rashmi Singh vs. State of U.P. &Ors., with the allegation that applicant No. 4/ father-in-law of opposite party no.2 is creating nuisance in functioning of petrol pump annexing representation dated 09.08.2021 addressed to various authorities viz. Additional Chief Secretary Home Department, District Magistrate, Lucknow, Police Commissioner, Lucknow with a prayer to issue a writ, order or direction in the nature of mandamus commanding to opposite party no.2 & 3 to provide proper security to Sankalp Filling Station and petitioner for safe her life and this Hon'ble Court vide its order dated 16.08.2021 was pleased to dismiss the afore-said writ petition as not pressed.

14. Learned counsel for the applicants further submits that on 24.08.2021 the opposite party no.2 lodged a First Information Report (FIR), which was numbered as FIR No. 407/2021 U/Sc 452, 354 A. 504, 506 IPC at P.S: Gosaiganj, District: Lucknow against applicant Nos. 1 to 5, alleging therein that the complainant is pregnant for approximately six months, was widowed due to her husband's demise from COVID-19 on April 22, 2021 and she has been subjected to relentless pressure and intimidation from her in-laws residing at 228, Aashiyana Colony, Kanpur Road, Thana Aashiyana, District

Lucknow. They have been attempting to coerce her into relinquishing her rights to her deceased husband's assets, including land, inheritance, and a petrol pump, despite her being the rightful heir as per legal documentation. Furthermore, the complainant has reported instances of verbal abuse, physical intimidation, and even death threats from her in-laws, including her father-in-law Ramesh Pratap Singh, mother-in-law Sushila Devi, brother-in-law Vipul Pratap Singh, and his wife Babbi Singh. The situation escalated on July 21, 2021, when Mr. Ramesh Pratap Singh forcibly entered Ms. Singh's current residence in Sadarpur Karoura and threatened her to comply with their demands, including transferring her assets in the name of her brother-in-law. These actions have created an extremely hostile environment for the complainant, who is already dealing with the challenges of widowhood and pregnancy. Despite her attempts to seek assistance, including filing a complaint with the Police Commissioner of Lucknow on August 9, 2021, no concrete legal action has been taken to address her grievances.

15. Learned counsel for the applicants further submits that the Investigating Officer after recording the statement of opposite party No.2 and two independent witnesses submitted charge-sheet dated 28.07.2022 against the applicants before the court of learned Magistrate and on the basis of the charge-sheet dated 28.07.2022, learned Magistrate vide its order dated 11.08.2022, which is impugned herein has taken the cognizance and summoned the applicant Nos. 1 to 3 under Sections 452, 504, 506, 406, 420, 498A I.P.C. and applicant Nos. 4 to 7 under Sections 452, 354A, 504, 506, 354, 354D, 406, 420, 498A, 509 I.P.C. to face trial.

16. Learned counsel for the applicants further submits that at the very outset it is submitted that all the allegations made in the afore-said FIR are totally wrong, false and incorrect. The opposite party

no.2 has initiated a malicious prosecution against the petitioners after all the properties as well as the retail outlet were transferred in the name of opposite party no.2.

17. Per contra, Sri Santosh Kumar Tirpathi, learned counsel for the opposite party No.2 and Ashok Kumar Singh, learned A.G.A.-1 for the State have contended that from the allegations made in the FIR prima facie offence is made out against the applicant. The innocence of the applicants cannot be adjudged at the pre trial stage. Therefore, the applicants do not deserve any indulgence, further learned counsel for the opposite party No.2 submits that opposite party No. 2 has been subjected to relentless pressure and intimidation from her in-laws residing at 228, Aashiyana Colony, Kanpur Road, Thana Aashiyana, District Lucknow. They have been attempting to coerce her into relinquishing her rights to her deceased husband's assets, including land, inheritance, and a petrol pump, despite her being the rightful heir as per legal documentation. Furthermore, the opposite party No. 2 has reported instances of verbal abuse, physical intimidation, and even death threats from her in-laws, including her father-in-law Ramesh Pratap Singh, mother-in-law Sushila Devi, brother-in-law Vipul Pratap Singh, and his wife Babbi Singh. The situation escalated on July 21, 2021, when Mr. Ramesh Pratap Singh forcibly entered Ms. Singh's current residence in Sadarpur Karoura and threatened her to comply with their demands, including transferring her assets in the name of her brother-in-law. These actions have created an extremely hostile environment for the complainant, who is already dealing with the challenges of widowhood and pregnancy.

18. After considering the arguments as advanced by the learned counsel for the parties and after perusal of the record, this Court finds that the entire argument raised by the learned counsel for the applicants relates to disputed questions of fact and the Court cannot

interfere in the same. From the allegations made in the FIR, charge sheet and cognizance order prima facie offence is made out against the applicants.

19. At the 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 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 Haryana Vs. Bhajanlal, 1992 SCC (Cr.)426**, (iii) **State of Bihar Vs. P.P. Sharma, 1992 SCC (Cr.)192**, (iv) **Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq & Anr., (Para-10) 2005 SCC (Cri.) 283** and (iv) **M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra, AIR 2021 SC 1918**.

20. From the aforesaid decisions the Apex Court has settled the legal position for quashing of the proceedings at the initial stage. The test to be applied by the court is whether uncontroverted allegation as made prima facie establishes the offence and whether chances of ultimate conviction are 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 under Section 482 Cr.P.C 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. The High Court would not embark upon an inquiry as it is the function of the Trial Judge/Court. The interference at the threshold of quashing of the criminal proceedings in pursuance to the charge-sheet, cognizance and summoning order, the case in hand cannot be said to be exceptional as it discloses prima facie commission of an offence. In the result, the prayer for quashing of impugned cognizance order, summoning order, charge sheet and the entire proceedings of the aforesaid case is refused. There is no merit in this application filed by the applicants under Section 482 Cr.P.C.

22. This Court cannot go into the disputed questions of fact once the prima facie offence is made out and in the present case, as per the allegation, prima facie offence is made out against the applicants. Therefore, no case is made out by the applicants for interference by this Court exercising power under Section 482 CrPC for the relief claimed.

23. Accordingly, this application filed under Section 482 Cr.P.C. by the applicants is **dismissed**.

Order Date :- 07.05.2024

Arvind