

Court No. - 13

Case :- APPLICATION U/S 482 No. - 7212 of 2024

Applicant :- Noorul Hasan And Anr.

Opposite Party :- State Of U.P. Thru Secy. Home Lko And Anr.

Counsel for Applicant :- Devendra Pratap, Saad Husain, Shashank Shekhar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania, J.

1. Heard Sri Shashank Shekhar Singh, learned counsel appearing for the applicants, Sri S.P. Tiwari, learned AGA for the State of U.P. and perused the record.

2. By means of the instant application, the applicants have sought the following main relief:-

"WHEREFORE, it is most respectfully prayed that this Hon'ble Court may Kindly be pleased to quash the summoning order 01.03.2024 and the charge sheet dated 23.02.2024 in crime no. 0478/2023, U/S -8/21(C)/29/60(3)N.D.P.S. Act at P.S.- Zaidpur, District -Barabanki, pending before District and Sessions Judge, District Barabanki. A true certified copy annexed herewith the petition as a Annexure no. 1 and 2."

3. A perusal of above quoted relief as also the contents of the instant application would indicate that the applicants have approached this Court for quashing the entire proceedings pending before court concerned namely District and Sessions Judge, District Barabanki (in short "trial court") arising out of Case Crime No. 0478 of 2023, under Sections- 8/21(C)/29/60(3) of N.D.P.S. Act, Police Station- Zaidpur, District- Barabanki.

4. Before proceeding further, it would be apt to indicate that the law with regard to exercise of jurisdiction under Section 482 of Cr. P.C. to quash complaints and criminal proceedings has already been settled.

5. In the case of ***Indian Oil Corporation v. NEPC India Limited***, (2006) 6 SCC 736; the Hon'ble Apex Court, after considering the earlier precedents, observed as under:-

"12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings has already been settled. have been stated and reiterated by this Court in several decisions. To mention a few—Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234], State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426], Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059], Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5

SCC 591 : 1996 SCC (Cri) 1045], *State of Bihar v. Rajendra Agrawalla* [(1996) 8 SCC 164 : 1996 SCC (Cri) 628], *Rajesh Bajaj v. State NCT of Delhi* [(1999) 3 SCC 259 : 1999 SCC (Cri) 401], *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.* [(2000) 3 SCC 269 : 2000 SCC (Cri) 615], *Hridaya Ranjan Prasad Verma v. State of Bihar* [(2000) 4 SCC 168 : 2000 SCC (Cri) 786], *M. Krishnan v. Vijay Singh* [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque* [(2005) 1 SCC 122 : 2005 SCC (Cri) 283]. The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v.) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person

could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In *G. Sagar Suri v. State of U.P.* [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] this Court observed : (SCC p. 643, para 8)

"It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

6. Recently, the above referred judgment has been considered by the Hon'ble Apex Court in the case of **A.M. Mohan vs. State Represented by SHO and Another** reported in **2024 SCC OnLine SC 339**.

7. In the case of *Ahmed Ali Quraishi Versus State of U.P. And Others* reported in AIR 2020 SCC 788, the Hon'ble Apex Court has observed as under:-

"10. Before we enter into facts of the present case and submissions made by the learned counsel for the parties, it is necessary to look into the scope and ambit of inherent jurisdiction which is exercised by the High Court under Section 482 CrPC. This Court had the occasion to consider the scope and jurisdiction of Section 482 CrPC. This Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , had elaborately considered the scope and ambit of Section 482 CrPC/Article 226 of the Constitution in the context of quashing the criminal proceedings. In para 102, this Court enumerated seven categories of cases where power can be exercised under Article 226 of the Constitution/Section 482 CrPC by the High Court for quashing the criminal proceedings. Para 102 is as follows:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 FIR 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 Act concerned (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 Act concerned, 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."

11. This Court in *Vineet Kumar v. State of U.P.* [*Vineet Kumar v. State of U.P.*, (2017) 13 SCC 369 : (2017) 4 SCC (Cri) 633] , had considered the jurisdiction of the High Court under Section 482 CrPC. In the above case also, the Additional Civil Judicial Magistrate had summoned the accused for offences under Sections 452, 376 and 323 IPC and the criminal revision against the said order was dismissed by the District Judge.

12. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in *State of Karnataka v. L. Muniswamy* [*State of Karnataka v. L. Muniswamy*, (1977) 2 SCC 699 : 1977 SCC (Cri) 404] , held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated: (SCC p. 703)

"7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be

permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

13. A three-Judge Bench in *State of Karnataka v. M. Devendrappa* [*State of Karnataka v. M. Devendrappa*, (2002) 3 SCC 89 : 2002 SCC (Cri) 539] , had the occasion to consider the ambit of Section 482 CrPC. By analysing the scope of Section 482 CrPC, this Court laid down that authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It further held that court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. The following was laid down in para 6: (SCC p. 94)

"6. ... All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

14. Further in para 8 the following was stated: (*Devendrappa case* [*State of Karnataka v. M. Devendrappa*, (2002) 3 SCC 89 : 2002 SCC (Cri) 539] , SCC p. 95)

"8. ... Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power

under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in *State of Haryana v. Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426]."

15. In *Sunder Babu v. State of T.N.* [*Sunder Babu v. State of T.N.*, (2009) 14 SCC 244 : (2010) 1 SCC (Cri) 1349], this Court was considering the challenge to the order of the Madras High Court where application was under Section 482 CrPC to quash criminal proceedings under Section 498-A IPC and Section 4 of the Dowry Prohibition Act, 1961. It was contended before this Court that the complaint filed was nothing but an abuse of the process of law and allegations were unfounded. The prosecuting agency contested the petition filed under Section 482 CrPC taking the stand that a bare perusal of the complaint discloses commission of alleged offences and, therefore, it is not a case which needed to be allowed. The High Court accepted the case of the prosecution and dismissed the application. This Court referred to the judgment in *Bhajan Lal* case [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] and held that the case fell within Category 7. The Supreme Court relying on Category 7 has held that the application under Section 482 deserved to be allowed and it quashed the proceedings.

16. After considering the earlier several judgments of this Court including the case of *State of Haryana v. Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426], in *Vineet Kumar* [*Vineet Kumar v. State of U.P.*, (2017) 13 SCC 369 : (2017) 4 SCC (Cri) 633], this Court laid down following in para 41: (*Vineet Kumar* case [*Vineet Kumar v. State of U.P.*, (2017) 13 SCC 369 : (2017) 4 SCC (Cri) 633], SCC p. 387)

"41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in *State of Haryana v. Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426]. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in *State of Haryana v. Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426], which is to the following effect: (SCC p. 379, para 102)

"102. ... (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."

Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court [*Vineet Kumar v. State of U.P.*, 2016 SCC OnLine All 1445] has noted the judgment of *State of Haryana v. Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426], but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High

Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings."

8. From the aforesaid, it is apparent that while dealing with the issue pertaining to quashing of criminal proceedings in the instant case, this Court while exercising the jurisdiction under Section 482 Cr.P.C. (now repealed) and Section 528 of Bharatiya Nagrik Suraksha Sahinta, 2023 (in short "B.N.S.S.") has to consider as to whether prima facie, no case is made out against the accused.

9. A bare reading of FIR would indicate that after apprehending the applicants namely Noorul Hasan s/o Ali Hasan and Mohd. Yusub s/o Nanha Ali, the prosecution recovered 50 packet/pudias of morphine from the possession of both the applicants, as such, at this stage, it cannot be said that no offence is made out against the applicants.

10. Having observed the aforesaid, this Court finds no force in the instant application. It is accordingly ***dismissed***.

Order Date :- 20.8.2024

Arun/-