

Court No. - 14

Case :- APPLICATION U/S 482 No. - 8928 of 2024

Applicant :- Kamran Ahmad Khan

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

Counsel for Applicant :- Shailendra Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Ajai Kumar Srivastava-I,J.

1. Heard Sri Shailendra Yadav, learned counsel for the applicant and Sri Rajesh Kumar Singh, learned A.G.A.-I for the State.

2. The instant second application under Section 482 Cr.P.C. has been filed *inter alia* praying for following reliefs :-

(i). To pass an order thereby setting aside the impugned order dated 05.08.2024 passed by learned Special Judge (SC/ST Act), Lucknow in Criminal Misc. Case No.27 of 2027 vide which the application for discharge of the applicant herein has been rejected by the Ld. Court and consequently discharge the applicant herein from the impugned criminal proceedings.

(ii). To pass an order thereby quashing the impugned summoning order dated 30.01.2023, so far it relates to the applicant, passed by the Court of Learned Special Judge (SC/ST Act), Lucknow in Criminal Misc. Case No.27 of 2021, contained as Annexure No.2 to this application, as well as entire proceedings of the Criminal Misc. Case No.27 of 2021, pending in the Court of Learned Special Judge (SC/ST Act), Lucknow, on the basis of the grounds mentioned in the accompanying petition.

3. Learned counsel for the applicant has submitted that the innocent applicant has been falsely implicated in this case because on the alleged date of incident the present applicant is out of country. His further submission is that the impugned order dated 05.08.2024 is palpably illegal in so far as it does not disclose application of judicial mind while passing the same as the learned trial Court has failed to appreciate the

fact that on the alleged date of incident, the applicant is out of country. His further submission is that in view of the aforesaid, the impugned order being palpably illegal deserves to be set aside and a direction needs to be issued to learned court below to reconsider the matter afresh. To substantiate his submissions, he has placed reliance upon a judgment rendered by Division Bench of this Court in **Madhuri Devi v. State of U.P., 2015 SCC OnLine All 10793** and para no.42 of the same is quoted hereinbelow :-

"42. Also, it may happen that the name of an accused is given by the complainant for mala fide reasons, however, at the point in time when the offence was committed that person was abroad. In the circumstances, manifest injustice would be caused in prosecuting that person. However, if the investigating officer also considers the version of the accused in that context, entries in the passport can be verified and a conclusion drawn that allegations in the First Information Report to that extent are false. Similarly, a person might not have anything to do in commission of an offence and he might have plausible and acceptable material and evidence to demonstrate that fact, surely it is the duty of the investigating officer to take those evidences/material into account and only thereafter conclude investigation. Objective of investigation is 'to find out the truth'. It is the bounden duty of the investigating officer to find out as to how the incident/transaction/event happened. The investigation is required to be conducted through a scrupulous, unbiased, trustworthy and lawful manner."

4. Per contra, learned A.G.A. has vehemently opposed the prayer by submitting that in fact the learned trial Court has rightly passed the impugned order, which is well discussed and reasoned. His further submission is that it is settled law that charge against an accused may be framed even on the basis of grave suspicion also.

5. Having heard learned counsel for the parties and upon perusal of the record, it transpires that this is the second application under Section 482 Cr.P.C. The first application under Section 482 Cr.P.C., bearing No.10112 of 2023, filed by the applicant, was disposed of by a coordinate Bench of

this Court vide order dated 16.10.2023, wherein the coordinate Bench did not consider the submission of learned counsel for the applicant that prima facie no cognizable offence is made out against the applicant and has already refused the prayer for quashing the impugned criminal proceedings.

6. It is also pertinent to mention that at the stage of framing charge, only prima facie case is to be seen, whether case is beyond reasonable doubt is not to be seen at this stage. If the court comes to the conclusion that the commission of offence is a probable consequence, a case for framing charge exists. At the stage of framing charge, probative value of materials on record cannot be gone into. At this stage, it is not necessary for the prosecution to establish beyond all reasonable doubts that the accusation which they are bringing against the accused person is bound to be brought home against him. At the stage of framing charge, the Court has to see if there is sufficient ground for presuming that the accused has committed an offence. If the answer is in affirmative, the order of discharge cannot be passed and the accused has to face trial. The plea of alibi is such a factual plea which cannot be decided at the initial stage of the proceeding. However, having said that this Court finds that the plea of alibi was duly discussed by the learned trial Court by means of impugned order dated 05.08.2024.

7. To substantiate aforesaid proposition, the judgment rendered by Hon'ble the Apex Court in **State of Maharashtra & Ors. v. Som Nath Thapa & Ors., AIR 1996 SC 1744** and **Rajbir Singh vs. State of U.P. & others, AIR 2006 SC 1963** may be usefully referred to.

8. It is also pertinent at this stage to mention that it would be evident from a perusal of provisions contained in Section 227 Cr.P.C. that the record of the case and documents submitted therewith as postulated in Section 227 Cr.P.C. relates to the case and the documents referred to in Section 209 Cr.P.C. No provision in the Code grants to the accused any right to file any material or document at the stage of framing charges. This right

is available to the accused only at the stage of the trial. In this regard a judgment of Hon'ble Supreme Court rendered in the case of **State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568** may be usefully referred to.

9. Therefore, in view of the aforesaid settled legal position, at this stage, only prima facie availability of material warranting framing of charge against the applicant is enough and no roving enquiry is required to ascertain veracity or otherwise of the prosecution case.

10. Thus, on the basis of the aforesaid discussion, this Court does not find illegality, irregularity or infirmity in the impugned order under challenge. There is no abuse of court's process either.

11. In view of the aforesaid observation, the instant application under Section 482 Cr.P.C. lacks merit and is accordingly **dismissed**.

(Ajai Kumar Srivastava-I, J.)

Order Date :- 16.10.2024
A.Dewal