

Court No. - 12

Case :- APPLICATION U/S 482 No. - 9809 of 2024

Applicant :- Atul Kumar Pandey

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

Counsel for Applicant :- Alok Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

1. Heard learned counsel for the applicant, learned A.G.A. 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:-

"WHEREFORE, it is most humbly and respectfully prayed that the Hon'ble Court may kindly be pleased to set aside/quash the entire proceedings of Case No.3037/2022 (State Versus Vikky Pandey and others) arising out of charge-sheet No. 01/2022, dated 20.04.2022 filed by the investigating officer in Case Crime No. 0022/2022, Under Sections 386, 387 & 393 I.P.C. pertaining to Police Station- Karaundi Kala, District- Sultanpur pending before the court of learned Additional Chief Judicial Magistrate, Court No. 19, Sultanpur and summoning order dated 04.05.2022 by which learned magistrate has summoned the applicant/petitioner for facing of trial under the aforesaid sections, as contained in Annexure No. 1 & 2 respectively to this petition, in the interest of justice."

3. Earlier, the applicant had approached this Court for the same relief on the same grounds by filing an Application U/S 482 No.4823 of 2022 and this Court passed the following order as under.

"Heard learned counsel for the applicant as well as learned A.G.A. for the State and perused the record.

The instant Application under Section 482 Cr.P.C. has been moved by the applicant with a prayer to the entire proceedings of Case No. 3037/2022 (State Versus Vikky Pandey and others) arising out of charge-sheet No. 01/2022, dated 20.04.2022 filed by the investigating officer in Case Crime No. 0022/2022, Under Section-386, 387 & 393 I.P.C. pertaining to Police Station- Karaundi Kala, District- Sultanpur pending before the court of learned Additional Chief Judicial Magistrate, Court No. 19, Sultanpur on the basis of compromise which was held on 05.07.2022 in between the parties. The copy of certified/typed copy of the charge-sheet dated 20.04.2022 along with summoning order dated 04.05.2022 and compromise dated 05.07.2022 are being annexed herewith as and marked as Annexure No. 01 & 02 respectively to this application.

Learned counsel for the applicant submits that the applicant is a reputed person in the society and he has been falsely implicated in the present case due to rivalry. He further submits that the impugned proceedings pending before the learned trial court are totally arbitrary and illegal and the same have been instituted without considering the material evidence available on record. Thus, he submits that entire criminal proceedings initiated against the applicant may be quashed.

Learned counsel for the applicant also prays for permission to appear through counsel before the concerned trial court within a period of three weeks from today and move an application claiming discharge on behalf of the applicant and this Court may direct the trial court to decide the application so moved by the applicant.

Learned A.G.A. has disputed the aforesaid contentions made by learned counsel for the applicant but he has not opposed the request made by learned counsel for the applicant to move a discharge application before the trial court through counsel.

All the contentions raised by the applicant's counsel relate to disputed questions of fact. The court has also been called upon to adjudge the testimonial worth of prosecution evidence and evaluate the same on the basis of various intricacies of factual details which have been touched upon by learned counsel. The veracity and credibility of material furnished on behalf of the prosecution has been questioned and false implication has been pleaded. In the process of invoking its inherent jurisdiction, this court cannot be persuaded to have a pre trial before the actual trial begins. The submissions made by the learned counsel call for adjudication on pure questions of fact which may be adequately adjudicated upon only by the trial court and while doing so even the submissions made on points of law can also be more appropriately gone into by the trial court in this case.

The quashing of the charge sheet and the entire proceedings can also be done only if it does not disclose any offence or if there is any legal bar which prohibits the proceedings on its basis. The Apex Court decisions in the case of R.P. Kapur Vs. State of Punjab AIR 1960 SC 866, State of Haryana Vs. Bhajan Lal 1992 SCC(Cr.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cri.) 192 and also in Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.) 283 make the position of law in this regard clear.

In the absence of any of the grounds recognized by the Apex Court which might justify the quashing of charge sheet/summoning order/impugned proceedings, the prayer for quashing the same is refused as I do not see any abuse of the courts process either. The trial court has been vested with sufficient powers to discharge the accused even before the stage to frame the charges comes, if for reasons to be recorded it considers the charge to be groundless.

As requested by learned counsel for the applicant, the permission to appear through counsel before the concerned trial court within a period of three weeks from today and move an application claiming discharge on behalf of whom this application under Section 482 Cr.P.C. has been moved, is granted. The concerned trial court shall after hearing the counsel decide the application on merits in accordance with law within a

period which shall not exceed a period of two months from today.

With the above observations, this application under Section 482 Cr.P.C. stands disposed of."

4. The applicant has also preferred a revision petition before this Court bearing Crl. Revision No.899 of 2024, which was dismissed by this Court vide order dated 06.08.2024. The said order reads as under.

"1. Heard.

2. Instant criminal revision under Section 397/401 of the Criminal Procedure Code (now under Section 438/442 of the Bharatiya Nagarik Suraksha Sanhita, 2023) has been filed challenging the order dated 05.07.2024 passed by the learned Civil Judge (S.D.), FTC/Additional Chief Judicial Magistrate, Sultanpur in Criminal Misc. Case No.100 of 2023 in re: State vs. Vikky Pandey and others, arising out of Case Crime No.22 of 2022, Police Station Karaundi Kala, District Sultanpur, whereby the application filed under Section 239 of the Cr.P.C. by the revisionist has been rejected.

3. Learned counsel for the revisionist has argued that (a) subsequent to filing of the case against the revisionist the revisionist and the complainant have compromised, and (b) the charges as levelled against the revisionist are baseless.

4. Apart from the fact that the scope of consideration of application under Section 239 of Cr.P.C. is limited meaning thereby that the Magistrate has to consider the charges against the accused to be groundless and only then can discharge the accused but from a perusal of the order impugned it emerges that the learned Magistrate has found that the charges as levelled against the revisionist have substance and thus has rejected the said application.

5. So far as the ground that the complainant and revisionist have compromised suffice to state that the learned Magistrate has considered the provisions of Section 320 of the Cr.P.C. to indicate that the offences for which the revisionist has been charged do not fall within the ambit of Section 320 of Cr.P.C. and thus even the said compromise would be of no avail to the revisionist.

6. Considering the aforesaid, no case for interference is made out. Accordingly, the revision is dismissed."

5. Learned A.G.A. states 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 paras 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 others*¹. 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 another³, 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."

6. Upon due consideration of the aforesaid including the fact that the applicant has earlier moved application u/s 482 Cr.P.C. for the same cause of action, this Court is of the view that present application is not liable to be entertained. Accordingly, the present application is **rejected**.

Order Date :- 18.11.2024
Anand/-