

Court No. - 11

Case :- APPLICATION U/S 482 No. - 10026 of 2024

Applicant :- Pawan Khera

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

Counsel for Applicant :- Nadeem Murtaza, Aditya Vikram Singh, Praveen Kumar Yadav, Varsha Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Sri Nadeem Murtaza and Sri Praveen Kumar Yadav, learned counsels for the applicant, Dr. V.K. Singh, learned Government Advocate assisted by Sri Punit Kumar Yadav and Sri Shivendra Shivam Singh Rathore, learned Additional Government Advocates for the State and Ms. Priyanka Singh, Advocate who has filed vakalatnama on behalf of opposite party no. 2 and the same is taken on record.

2. Sri Nadeem Murtaza has filed rejoinder affidavit and the same is taken on record.

3. Dr V.K. Singh has raised objection regarding maintainability of this petition by submitting that the applicant approached this Court and the Apex Court time and again and the Apex Court relegated the matter to the jurisdictional Court. Besides, the present applicant tendered his unconditional apology before the Apex Court and the Apex Court after clubbing all the FIRs, relegated the matter to the jurisdictional Court, Lucknow, therefore, the present petition is under Section 482 is not maintainable.

4. Sri Singh has also submitted that once the discharge application of the applicant has been rejected by the jurisdictional Court, i.e., the Court of CJM, Lucknow and the Revisional Court, i.e., the Court of Sessions upheld the order of the CJM, then, at this stage, the veracity of the charges may not be examined invoking powers under Section 482 CrPC.

5. Replying the aforesaid contention of Dr V.K. Singh, Sri Nadeem Murtaza has stated that the learned Apex Court while relating the applicant to approach the jurisdictional Court kept it open to raise all pleas and grounds which are available to the applicant and since, the allegations/charges are frivolous and misconceived on the face of it as those charges are not

sustainable in the eyes of law so far as the present applicant is concerned, therefore, he may challenge the said chargesheet, challenging the same in this petition and despite the fact that the discharge application has been rejected and the revision of the applicant has been rejected, even then the applicant may not be legally barred to challenge the chargesheet by filing petition under Section 482.

6. So as to appreciate the aforesaid rival contentions of the learned counsel for the parties, it would be pertinent to indicate herein below the prayer of this petition which reads as under:-

"1. To quash the impugned order, dated 02.07.2024, passed by Special judge MP/MLA /Additional Sessions Judge, Court No.19, Lucknow in Criminal Revision No. 39/2024 (Pawan Khera v. State of U.P), whereby the Revision Petition of the Applicant assailing dismissal of discharge application has been dismissed;

2. To quash the impugned order, dated 05.01.2024, passed by learned Chief Judicial Magistrate, Lucknow, whereby the discharge application preferred by the Applicant under section 239 of Cr.P.C has been dismissed;

3. To quash the impugned order, dated 30.01.2024, passed by the learned Chief Judicial Magistrate, Lucknow whereby charges have been framed against the Applicant of Criminal Case No. 34136 of 2023 (State of U.P v. Pawan Khera), arising out of case crime no. 65/2023 under sections 153A, 500, 504, 505(2), 153B (1), 505, 505(1)(b) IPC, Police Station Hazratganj, District Lucknow;

4. To discharge the Applicant in Criminal Case No. 34136 of 2023 (State of U.P v. Pawan Khera), arising out of case crime no. 65/2023 under sections 153A, 500, 504, 505(2), 153B (1), 505, 505(1)(b) IPC, Police Station Hazratganj, District Lucknow"

7. Notably, this is a case where on account of press conference dated 17th February 2023 in Mumbai organised by the present applicant, wherein, he uttered objectionable/insulting words against the Prime Minister of India using inappropriate language. Several First Information Reports have been lodged at various places of the country against him and he approached the Hon'ble Apex Court by filing a Writ Petition (Criminal) Diary No. 8222 of 2023, making three requests which have been indicated in paragraph 3 of the order of the Apex Court which reads as under:-

"1. Quashing of the complaints;

2. in the alternative, transfer and clubbing of the FIRs at one jurisdiction; and

3. restraint on all coercive steps and to provide security to the petitioner and his family."

8. The Apex Court vide order dated 23rd February 2023 directed in paragraph 12 as under :-

"(i) Issue notice on the prayer of the petitioner for transferring and clubbing of the FIRs which have been registered in respect of the press conference in question in one jurisdiction;

(ii) For that purpose, notice shall issue, at this stage, to the States of Assam and Uttar Pradesh;

(iii) Ms Aishwarya Bhati, Additional Solicitor General, appearing with Mr Shuvodeep Roy, accepts notice on behalf of the State of Assam. Liberty to serve the Standing Counsel for the State of Uttar Pradesh, in addition;

(iv) In order to enable the petitioner to apply for regular bail before the jurisdictional court, upon the FIRs being transferred to one jurisdiction, we direct that the petitioner shall be released on interim bail by the court of the competent Magistrate at Delhi where he is to be produced this evening;"

9. The Apex Court vide order dated 20th March 2023 directed that all the FIRs shall stand transferred to Police Station Hazrat Ganj, Lucknow, where the first FIR was lodged, extending the interim order till 10th April 2023, giving liberty to the applicant to apply for regular bail before the jurisdictional court. All the contentions of the parties were left open to be argued before the jurisdictional court.

10. The applicant has filed one Application under Section 482 CrPC No. 7810 of 2023 before this Court challenging the chargesheet, summoning order and entire proceedings. The aforesaid petition came to be dismissed by the judgement and order dated 17th August 2023.

11. Paragraph 18 to 22 of the aforesaid order are quoted herein below:-

"18. In a recent judgment of Central Bureau of Investigation Vs. Aryan Singh etc. in Criminal Appeal No. 1025-1026 of 2023 decided on 10.04.2023, the Hon'ble Apex Court has categorically held that mini trial is not to be conducted while exercising the powers under Section 482 Cr.P.C.

In para 4.1 of the said judgment, Hon'ble Apex Court held as under:

"4.1 From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr.P.C., the Court is not required to conduct the mini trial."

19. Moreover, the evidences collected by the Investigating Officer cannot be evaluated by this Court in the present proceedings on the basis of pleadings, counter affidavit as well as rejoinder affidavit.

20. Indisputably, Hon'ble Supreme Court vide order dated 20.03.2023, while disposing of the Writ Petition (Criminal) No. 74 of 2023 filed by the applicant-petitioner, has clearly directed the applicant to raise all the contentions before the jurisdictional court, which is the court of learned Chief Judicial Magistrate, Lucknow and in pursuance of the said order, the applicant may appear before the jurisdictional court and raise all his grievances before the court below.

21. In view of the above facts and discussions, the application has no merit and is, accordingly, dismissed.

22. However, it is open to the applicant to appear before the learned court below in pursuance of the directions of the Hon'ble Apex Court dated 20.03.2023 passed in Writ Petition (Criminal) No. 74 of 2023. "

12. The applicant assailed the order dated 17th August 2023, before the Apex Court by filing Special Leave to Appeal (Crl.) No. 13143 of 2023 and the Apex Court vide order dated 4th January 2024, dismissed the Special Leave to Appeal (Annexure No. 14).

13. Since the High Court did not appreciate the prayer of the applicant seeking quashing of the chargesheet, summoning order and entire proceeding by vide judgement and order dated 17th August 2023 (supra) and the Apex Court did not interfere in the aforesaid order, therefore, in a subsequent stage, the entire proceedings including chargesheet and summoning order could have not been assailed and the applicant should participate in the trial proceedings.

14. Learned counsel has informed that the present applicant is participating in the trial proceedings and is not delaying the trial in any manner whatsoever.

15. The learned Government Advocate and the learned counsel for the opposite party no. 2 two have also stated that in two or three dates, the applicant took adjournment from the learned trial court, otherwise he is appearing and cooperating. P.W.-1 has been examined by the learned trial court. The chief of P.W.-2 is complete and he is to cross examined on the next date.

16. After the order dated 17th August 2023 passed by this Court, the applicant filed discharge application before the court of Chief Judicial Magistrate and that application came to be rejected on 5th January 2024. Thereafter, criminal revision challenging the order dated 5th January 2024 was filed on 16th January 2024 before the Sessions Court. During the pendency

of the aforesaid criminal revision, the learned trial court framed the charges against the applicant on 30th January 2024. The criminal revision came to be dismissed on 2nd July 2024. The present applicant again filed one Application under Section 482 CrPC No. 8208 of 2024, challenging the order dated 2nd July 2024 (supra), whereby, the criminal revision came to be dismissed, the order dated 30th January 2024 passed by the CJM Lucknow, whereby, charges have been framed and the entire proceedings.

17. In the aforesaid petition, Dr VK Singh, learned Government Advocate raised same objection to the effect that all the efficacious and alternative remedies have been availed by the applicant, so he should participate in the trial proceedings. This Court vide the judgement and order dated 25th September 2024 observed that the third prayer, whereby, quashing of the entire proceedings have been prayed is not maintainable, but so far as the prayer number one and two are concerned, the application was dismissed, giving liberty to the applicant to file fresh application, including the reasons as to why he had not assailed the order dated 5th January 2024, whereby, the application for discharge came to be dismissed. Therefore, it is clear from the aforesaid orders as well as from the facts and circumstances that the applicant may not pray for quashing of the entire proceedings. Though, pursuant to the judgement and order dated 25th September 2024 (supra), he could have filed another petition challenging prayer number one and two of earlier petition as well as the order dated 5th October 2024 (supra). Pursuant to the aforesaid order of this Court, the present petition has been filed.

18. If the view of this Court was that, vide order dated 17th August 2023 (supra) and order dated 25th September 2024, the applicant should participate in the trial proceedings without challenging the trial proceedings and the present applicant has participated in the proceedings, then the veracity of charges may be appreciated during the course of the trial. Once, the discharge application of the present applicant came to be dismissed by speaking and reasoned order, considering the arguments of the learned counsels and that order has been merged in the revisional order dated 2nd July 2024, again by speaking and reasoned order, then the order dated 2nd July 2024 (supra) passed by the Special Judge MP/MLA/Additional Sessions Judge, Court No. 19 and the order dated 5th January 2024 passed by the CJM, Lucknow are not liable to be interfered. Since, charges have already been framed by the order dated 30th January 2024 and witnesses are being examined then in view of the aforesaid facts, the order dated 30th January 2024 (supra) may not be interfered.

19. In view of the above, the present applicant may not be discharged at this stage, however, it is always open to the applicant to raise all pleas and grounds which are available to him convincing the learned trial Court that the charges are not sustainable to be proved against him. The Apex Court in re:- **Central Bureau of Investigation vs. Aryan Singh (supra)** has already held that as per cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 CrPC, the Court is not required to conduct the mini trial.

20. The learned AGA has filed a short counter affidavit, enclosing therewith the entire order sheet of the learned Court below as Annexure No. SCA-3, which indicates that the trial in question is going on and the dates are being fixed for examination of prosecution witnesses.

21. In view of the facts and circumstances of the present case this petition under Section 482 CrPC is not maintainable at this stage, inasmuch as the present applicant has filed couple of petitions before this Court and Apex Court and he could not get relief against the charges/allegations. Even before the Apex Court, the counsel submitted that the present applicant would not press the prayer for quashing FIR, since, the petitioner would be advised to pursue the remedies which are available to him in accordance with law. His counsel stated before the Apex Court that since, the applicant has clarified that the use of any language was inadvertent though inappropriate, and that he would not stand by the use of such language. The present applicant tendered his unconditional apology for the allegation/charges and he is participating in the trial proceedings, then instead of challenging the rejection of discharge application order, the order, whereby the charges have been framed and the revisional order, he should cooperate in the trial proceedings properly so that the trial proceeding could be conducted and concluded with expedition strictly in accordance with law by affording proper opportunity of hearing to the parties.

22. In the backdrop of what has been considered above, the submission of Sri Nadeem Murtaza, placing reliance on **2021 SCC OnLine ALL 1237, Sheub Mahmood Kidwai alias Bobby Vs. State of U.P. and Anr, 2023 SCC OnLine SC 948, Haji Iqbal alias Bala Vs. State of U.P. and Anr and 2019 (18) SCC 69, Harish Dahiya Vs. State of Punjab** that maintainability of the petition under Section 482 does not depend upon the stage of case, would not carry weight. Though, at the appropriate stage during the trial, if learned trial court finds that after taking the evidence of the prosecution,

examining the accused and hearing the prosecution and the defence on the point, there is no evidence that accused committed the offence, the trial court may acquit the applicant after recording the reasons.

23. I had occasion to deal with a petition filed under Section 482 no. 4022 of 2021, Ramesh Yadav Vs. State of U.P and referring various decisions of the Apex Court. The aforesaid petition was dismissed. The Apex Court has held in catina of cases that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too, in the rarest of the rare cases.

24. Paragraph 28 of the abovesaid judgement is quoted hereinunder:-

"28. The Hon'ble Apex Court in re; Amanullah and Another v. State of Bihar and Others, (2016) 6 SCC 699, while considering the scope of Section 482 Cr.P.C. has observed in paras 25 to 29 as under:-

"25. A careful reading of the material placed on record reveals that the learned CJM took cognizance of the offences alleged against the accused persons after a perusal of the case diary, charge-sheet and other material placed before the court. The cognizance was taken, as a prima facie case was made out against the accused persons. It is well settled that at the stage of taking cognizance, the court should not get into the merits of the case made out by the police, in the charge-sheet filed by them, with a view to calculate the success rate of prosecution in that particular case. At this stage, the court's duty is limited to the extent of finding out whether from the material placed before it, the offence alleged therein against the accused is made out or not with a view to proceed further with the case.

26. The proposition of law relating to Section 482 CrPC has been elaborately dealt with by this Court in Bhajan Lal case [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . The relevant paras 102 and 103 of which read thus : (SCC pp. 378-79)

"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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

27. Further, this Court in **Rajiv Thapar v. Madan Lal Kapoor [Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158]** has laid down certain parameters to be followed by the High Court while exercising its inherent power under Section 482 CrPC, in the following manner : (SCC pp. 347-49, paras 29-30)

"29. The issue being examined in the instant case is the jurisdiction [Madan Lal Kapoor v. Rajiv Thapar, 2008 SCC OnLine Del 561 : (2008) 105 DRJ 531] of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/

complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1. Step one : whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two : whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three : whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four : whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

(emphasis supplied)"

25. Notably, before filing this petition under Section 482 CrPC,

the petitioner has earlier filed two more petitions, more or less on the same request, and this Court has not granted relief as prayed in those petitions. In the present case, I do not find any rarest of the rare circumstances, compelling to discharge the applicant and to quash the orders. Besides, the present applicant has not assailed the proceedings then he should participate in the trial proceedings. It is needless to say that the appropriate orders may be passed by the trial Court at the appropriate stage.

26. Accordingly, this petition is **dismissed** being not maintainable at this stage.

27. No order as to costs.

Order Date :- 3.12.2024

Anurag