

Court No. - 12

Case :- APPLICATION U/S 482 No. - 10665 of 2024

Applicant :- Divya Singh And Another

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

Counsel for Applicant :- Pramod Kumar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

1. Heard learned counsel for the applicants and learned A.G.A. for the State and perused the record.

2. The present application has been filed by the applicants seeking following main reliefs:-

"1. Quash every proceeding arising out with impugned summoning order dated 12.04.2024 passed by learned A.C.J.M. 5 Lucknow and impugned charge sheet dated 20.02.2024, in criminal Misc. case No. 55374 of 2024 in case crime No. 0032 of 2024 under sections 323, 504, I.P.C. Police station Janki Puram District Lucknow, contained in ANNEXURE NO. 1, & 2 respectively to this petition.

II. Stay every proceeding arising out from impugned summoning order dated 12.04.2024 passed by learned A.C.J.M. 5 Lucknow and impugned charge sheet dated 20.02.2024, in criminal Misc. case No. 55374 of 2024 in case crime No. 0032 of 2024 under sections 323,504, I.P.C. Police station Janki Puram, District Lucknow, in the interest of justice."

3. Learned counsel appearing on behalf of the applicants submits that the charge sheet has been submitted for the non-cognizable offence i.e. under Section 323, 504 I.P.C. It is contended that it shall be deemed to be complaint under explanation to Section 2(d) of Cr.P.C. Hence, the order of cognizance, as a State case, is not a correct procedure and, therefore, the order of cognizance is liable to be quashed. Counsel for the applicants has placed reliance on the judgment of this Court passed in **Application U/s 482 No. 45609 of 2018 (Santosh Kumar and two others v. State of U.P. and another)**. Relevant portion of the said judgment is extracted hereinbelow:-

"Learned counsel for the applicants in support of his submissions has relied upon the judgment passed by a co-ordinate Bench of this Court in the matter of "Rakesh Kumar Sharma vs. State of U.P. and Another" reported in 2007 (3) JIC 654 (All), 2007 (9) ADJ 478: 2007 Law Suit (All) 2322 and specifically para Nos. 5 and 6 of the said judgment, which is mentioned hereinafter, states that:-

"5. He submitted that in the present case originally the F.I.R. Was lodged under Section 307 IPC but after investigation the Investigating Officer came to the conclusion that no offence under Section 307 IPC was made out and only a case under Section 504 IPC was mad out against the applicant and so a charge-sheet under Section 504 IPC was submitted against the applicant. He contended that in

view of the aforesaid Explanation to Section 2 (d), Cr.P.C. the case could not proceed as a police case in respect of an offence punishable under Section 504 I.P.C. Because the offence under Section 504, I.P.C. is non-cognizable and so the case could proceed only as a complaint case in view of the aforesaid Explanation.

6. The above contention of the learned counsel for the applicant is correct. I, therefore, allow this application under Section 482 Cr.P.C. to this extent that the cognizance taken by the Magistrate in the case on the basis of the report of the police for the offence punishable under Section 504 I.P.C. and the orders passed by him for issuing warrant against the applicant are hereby quashed. The Magistrate shall not proceed with the case as a State case but he shall proceed with it as a complaint case as provided in the Explanation to Section 2 (d), Cr.P.C. and he shall follow the procedure prescribed for hearing of a complaint case."

Heard learned counsel for the applicants and learned AGA for the State. Since the legal issue is involved in the present matter, I am deciding it on merits at the admission stage only.

The relevant provisions of law involved in the present case are mentioned hereinafter :-

Explanation to Section 2 (d) Cr.P.C.- A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;

Section 155 Cr.P.C.- Information as to non-cognizable cases and investigation of such cases:-

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

Section 190 Cr.P.C. - Cognizance of offences by Magistrates :-

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence -

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

Section 200 Cr.P.C.- Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192:

In "*Balwant Singh and another vs. State of U.P. and another*" (Application u/s 482 No. 45945 of 2014, decided on 14.11.2014), wherein the co-ordinate Bench of this Court has held that :-

"But in the case of *Ghansahyam Dubey alias Little and others Vs. State of U.P. and another (supra)* as well as in case of *Budhi Ram and 3 others Vs. State of U.P. and another* mentioned above Honourable Single Judges of this Court have held that charge sheet submitted by police in non-cognizable case even after investigation made by police in pursuance of order passed by Magistrate shall be deemed to be complaint under section 2(d) of Cr.P.C. In these cases provisions of section 155(2) and 15(3) Cr.P.C. as well as pronouncements of Honourable Apex Court rendered in the case of *Keshab Lal Thakur Vs. State of Bihar (supra)* have not been considered and these pronouncements do not lay correct law.

In view of above I am of the view that this matter should be placed before Hon'ble Division Bench for consideration."

Another co-ordinate Bench of this Court is the case of "*Smt. Saroj Devi vs. State of U.P. and Another*" (Application u/s 482 No. 30184 of 2016, decided on 6.10.2016) after considering the judgments passed in *Rakesh Kumar Sharma (Supra)*, *Ghanshyam Dubey @ Little & others vs. State of U.P. & Ors.* 2010 Law Suit (All) 3093 and *Balwant Singh and Another vs. State of U.P. & Another* (Application u/s 482 No.45945 of 2014, decided on 14.11.2014) has held that:-

"In pursuance of this order without registering the check F.I.R the investigation was conducted and during the investigation the charge sheet was submitted only under Sections 323 and 504 I.P.C. The offence under section 307 I.P.C alleged by the opposite party No.2 was found to be not made out.

Now the question arises whether the investigation conducted by the Investigating Officer can be said to be illegal in the present case, I do not think so. Now came to a situation where while investigating a cognizable offence, the police officer conducting an investigation subsequently opines that only non-cognizable offences are made out. This report has to be treated as complaint under section 2(d) Cr.P.C. Now the question arises whether the cognizance on such complaint has been rightly taken by the Magistrate or it is barred by law or without jurisdiction. In this regard section 190 Cr.P.C comes into play which is quoted herein below:-

Cognizance of offence by Magistrate. (1) subject to the provision of this chapter, any Magistrate of the first class, and any Magistrate of the second class specially

empowered in his behalf under sub-section (2), may take cognizance of any offence (a) upon receiving a complaint of fact which constitute such offence ; (b) upon a police report of such facts; (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

Clause-(1) herein above authorises the Magistrate to take cognizance upon receiving a complaint of that facts which constitute offences. vide *Fakhruddin Ahmad Vs. State*, 2008 (Cri. L.J, 4377 (SC).

Now the question arises whether on a complaint the summoning of the accused after having taken cognizance under section 190(1)(a) Cr.P.C can be made without examining the witnesses. Ist Proviso to section 200 Cr.P.C answer this question whether it provides the following:-

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) If a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint: or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192: ?

Thus, when a public servant acting or purporting to act in the charge of his official duties or a Court has made the complaint and his witnesses the Magistrate is fully empowered to take cognizance and proceed with the matter. Therefore, issue of process against the present applicant cannot be said to be illegal and neither cognizance is barred nor the prosecution is vitiated.

Now first submission made on behalf of the applicant stands negated by the proviso to section 200 Cr.P.C.

The second submission that the instant case has to be tried as a complaint case and not as a State case, this submission is also without comprehending the procedure prescribed in Chapters XIX and XX of the Code of Criminal Procedure. As is evident from these chapters for the cases instituted on a police report if it is a warrant trial a different procedure has to be applied by the Magistrate and for other kind of cases Part-B (Sections 244-247) prescribes a departure from the first kind of case but Chapter XX of the Code of Criminal Procedure for trial of summon cases, as the present one is, no separate procedure has been prescribed either it may be a case instituted on a police report or other case. Thus, the second submission has no bearing to make the trial of case No.417 of 2016 (*State of U.P. Vs. Dinesh Chandra Pathak and another*), under sections 323 and 504 I.P.C illegal.

The application is without substance, hence dismissed."

Another Co-ordinate Bench of this Court in the matter of "*Arjun Yadav and 2 Ors. vs. State of U.P. and Another*" (Application u/s 482 No.31491 of 2016, decided on 19.10.2016), in similar circumstances has held that charge-sheet should be treated as complaint.

In the judgment passed by the Hon'ble Supreme has held in the matter of "*Keshav Lal Thakur vs. State of Bihar*" reported in 1996 (11) SCC 557 has held that :-

3. We need not go into the question whether in the facts of the instant case the above view of the High Court is proper or not for the impugned proceeding has got to be quashed as neither the police was entitled to investigate into the offence in question nor the Chief Judicial Magistrate to take cognizance upon the report submitted on completion of such investigation. On the own showing of the police, the offence under Section 31 of the Act is non-cognizable and therefore, the police could not have registered a case for such an offence under Section 154 Cr. P.C. Of course, the police is entitled to investigate into a non- cognizable offence pursuant to an order of a competent Magistrate under Section 155(2) Cr. P.C. but, admittedly, no such order was passed in the instant case. That necessarily means, that neither the police could investigate into the offence in question nor submit a report on which the question of taking cognizance could have arisen. While on this point, it may be mentioned that in view of the proviso to Section 2(d) Cr. P.C., which defines 'complaint', the police is entitled to submit, after investigation, a report relating to a non-cognizable offence in which case such a report is to be treated as a 'complaint' of the police officer concerned, but that explanation will not be available to the prosecution here as that relates to a case where the police initiates investigation into a cognizable offence - unlike the present one - but ultimately finds that only a non- cognizable offence has been made out.

In the present matter, investigation was undertaken for non-cognizance offence and charge-sheet filed under non-cognizance offences only, therefore, charge-sheet should be treated as a complaint. Therefore, the order impugned i.e. order of taking cognizance is set aside and the learned trial court shall proceed the case as a complaint case under Chapter XV of the Code of Criminal Procedure. The trial court may also directed to take it into consideration the Proviso (a) to Section 200 Cr.P.C.

With these observations, the application stands disposed off."

4. Learned A.G.A. has no objection, if the order taking cognizance, is set aside.

5. Therefore, in view of the settled legal position, the order impugned i.e. order of taking cognizance is **set aside**. The trial court shall proceed with the case as a complaint case under Chapter XV of the Code of Criminal Procedure. The trial court may also take into consideration the Proviso (a) to Section 200 Cr.P.C.

6. With the aforesaid directions, this application is finally **disposed of**.

Order Date :- 25.11.2024

Arun/-