Court No. - 14

Case :- APPLICATION U/S 482 No. - 10888 of 2024

Applicant :- Shiv Kumar And 5 Others
Opposite Party :- State Of U.P. Thru. Secy. Home Lko. And Another
Counsel for Applicant :- Santosh Kumar Tripathi
Counsel for Opposite Party :- G.A.

Hon'ble Ajai Kumar Srivastava-I,J.

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

2. The instant application under Section 482 Cr.P.C. has been filed for quashing the summoning order dated 08.08.2024 passed in Criminal Case No.336/2021 (4329/2021), Babita vs. Shiv Kumar & others, under Section 504, 506(1) I.P.C. and Section 3/4 D.P. Act, Police Station Itaunza, District Lucknow.

3. Learned counsel for the applicants has submitted that the impugned summoning order dated 08.08.2024 is not in conformity with the statement of the complainant recorded under Section 200 Cr.P.C. and statements of witnesses, recorded under Section 202 Cr.P.C. The learned trial Court while passing the impugned summoning order has failed to appreciate the fact that the complainant's version of the incident, as stated in the complaint, is not substantiated by the statement of the complainant recorded under Section 200 Cr.P.C. and the statement of witnesses recorded under Section 202 Cr.P.C. Thus, that even *prima facie* no offence is disclosed against the applicants, despite this fact, he has been summoned to face the trial which is nothing but

malicious prosecution and an abuse of the process of the Court.

4. Per contra, learned A.G.A. has submitted that this is not a stage where minute and meticulous exercise with regard to the appreciation of evidence may be done and truthfulness of the allegations could only be tested in a criminal trial. At this initial stage, the fact of innocence of the applicants can also not be determined.

5. Learned A.G.A. further submits that the sufficiency of the material and the test to be applied at the stage of issue of process has been considered in the case of **Nupur Talwar v. Central Bureau of Investigation and Another** reported in **(2012) 11 SCC 465**, wherein it has been reiterated that the test to be applied at the stage was whether the material placed before the Magistrate was "sufficient for proceeding against the accused" and not "sufficient to prove and establish the guilt".

6. He has also drawn attention of this Court to a recent judgment rendered by Hon'ble Supreme Court in **CBI v. Aryan Singh, 2023 SCC OnLine SC 379**, wherein it has been held that 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. At the stage of discharge and/or while exercising the powers under Section 482 Cr. P.C., the Court has a very limited jurisdiction and is required to consider "whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not".

7. On the basis of the aforesaid, he submits that no interference with the impugned summoning order and proceedings is warranted at this stage and, therefore, the application is misconceived and is liable to be dismissed.

8. Having heard learned counsel for parties and upon perusal of the records including the impugned summoning order dated 08.08.2024, it transpires that the allegations in the complaint have been found to be duly corroborated by the statement made on oath by the complainant during the course of examination under Section 200 Cr.P.C. and also the statements of witnesses recorded during inquiry made by the learned Magistrate under Section 202 Cr.P.C.. The impugned order has been passed referring the aforesaid statements recorded under Section 200 Cr.P.C. and under Section 202 Cr.P.C. and only thereafter, impugned summoning order has been passed. Therefore, at this initial stage, no ground for quashing the impugned summoning order and the proceedings of aforesaid case is made out.

9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. In this regard reference may be made to a judgment rendered by Hon'ble Supreme Court in **Dy. Chief Controller of Imports & Exports v. Roshanlal Agarwal, (2003) 4 SCC 139.**

10. Hon'ble Supreme Court in **U.P. Pollution Control Board v. Mohan Meakins Ltd., (2000) 3 SCC 745** has categorically held that while issuing process, the Magistrate must not anticipate the decision Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of inquiry.

11. In **Chandra Deo Singh v. Prokash Chandra Bose, 1963 SCC OnLine SC 4** Hon'ble Supreme Court has held that whether evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of inquiry.

12. Having regard to the aforesaid settled legal position, this Court is of the considered view that the grounds which have been taken to quash the impugned order dated 08.08.2024 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. This Court does not deem it proper, and therefore cannot be persuaded to have a pre-trial before the actual trial begins. A threadbare discussion of various facts and circumstances, as they emerge from the allegations made against the accused, is being purposely avoided by the Court for the reason, lest the same might cause any prejudice to either side during trial. Therefore, this Court does not find any justification to quash the proceedings against the applicant as the case does not fall in any of the categories recognized by Hon'ble the Supreme Court which may justify their quashing.

13. Accordingly, prayer of quashing the impugned

summoning order dated 08.08.2024 and proceedings emanating therefrom is hereby refused.

14. Even otherwise, the applicants shall have an opportunity at the appropriate stage to move an application for discharge before appropriate Court taking therein all the pleas factual and legal which may be available to them, in accordance with law. In case, such an application is moved before the learned trial Court, the learned trial Court shall dispose of the same by a speaking and reasoned order strictly, in accordance with law having regard to the entire facts and evidence available on record.

15. However, it is needless to mention that in case the applicants apply for bail, the learned trial Court concerned shall consider and decide the same expeditiously, in accordance with law laid down by the Hon'ble Supreme Court in **Satender Kumar Antill Vs. Central Bureau of Investigation and others** : MANU/SC/1024/2021 and having regard to the fact that the applicant nos.3 and 4 are women and the offences are punishable upto seven years only.

16. In view of the aforesaid observations, the instant application under Section 482 Cr.P.C. is finally **disposed of**.

(Ajai Kumar Srivastava-I, J.)

Order Date :- 2.12.2024
A.Dewal

Digitally signed by :-
ASHISH DEWAL
High Court of Judicature at Allahabad,
Lucknow Bench