

Court No. - 74

Case :- APPLICATION U/S 528 BNSS No. - 13180 of 2025

Applicant :- Harendra Pal @ Gandhi

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Rajesh Kumar, Ramesh Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Srivastava, J.

1. Heard Sri Ramesh Kumar Singh, learned counsel for applicant and learned AGA for State.
2. Present application has been preferred with the prayer to quash the entire proceeding of Case no. 1254/2024 arising out of Case Crime no. 202/2024 under section 109, 317(5) BNS and sections 3/25/27 Arms Act, PS- Mahawan, District Mathura pending before learned District and Sessions Judge, Mathura.
3. The instant matter has been preferred for challenging entire proceeding. The specific averment has been made during course of argument that neither the charge-sheet nor the summoning order has ever been put under challenge whereas the instant application has been preferred at the behest of the applicant for challenging the entire proceedings which is initiated in pursuance to registration of Case Crime no. 202 of 2024. It is fairly admitted by learned counsel for the applicant that at no point of time, the epigenis of the matter in shape of registering the FIR has never been put under challenge but during course of investigation, certain material facts which has been brought to the knowledge of the learned trial court in shape of CCTV footage was prayed to be preserved and the same was directed to be preserved vide order dated 17.02.2025.
4. The entire proceedings arising out of Case Crime no. 202 of 2024 has been put under challenge at the behest of applicant on several other grounds *inter alia* precisely on the following grounds :

(i) the case of false implication can very well be ascertained from the narration of the FIR, itself,

(ii) CCTV footage clearly shows non-involvement of the applicant in committing any offence as narrated in the FIR,

(iii) no private witness has recorded statement during course of inquiry conducted by concerned Inquiry Officer,

(iv) at the time of preferring charge sheet, only the photocopies has been submitted whereupon the cognizance of offence has been taken up by learned concerned court,

5. For substantiating arguments, raised by learned counsel for the applicant, he relied upon judgment rendered by Hon'ble Apex Court in case of **Mahmood Ali & others vs. State of U.P. & others** decided on 08.08.2023 in Criminal Appeal no. 2341 of 2023 arising out of SLP (Criminal) no. 12459 of 2022. In the light of the judgment rendered by Hon'ble Apex Court, learned counsel for the applicant tried to demonstrate that if the epigenis of the matter is under challenge in shape of entire proceeding and on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely.

6. The arguments has been further substantiated with the rational study of the judgment rendered by Hon'ble Apex Court that where the FIR and proceeding word has been mentioned, it is the proceeding which has to be taken into consideration by this Court from the stage of submission of police report under Section 173 Cr.P.C. before the learned court concerned and before submission of charge sheet, the same can be termed under the proceedings.

7. Per contra, learned AGA vehemently opposed the prayer made in the petition and rebutted the stand taken up by learned counsel for the applicant on the ground that entire argument whatsoever has been raised

by learned counsel for the applicant is subject matter of trial and the grounds taken up by learned counsel for the applicant cannot be appreciated at this stage, by this Court under the proceeding of 482 Cr.P.C./528 BNSS and the matter relates to the incident wherein the applicant has been implicated over the allegation of firing over the police party.

8. After hearing the rival submissions extended by learned counsel for rival parties, the grounds taken up for challenging entire proceeding through instant application has to be dealt carefully, since the same has been substantiated with the arguments which has been strictly relied over judgment of **Mahmood Ali and others (supra)**.

9. The grounds which has been raised by learned counsel for the applicant is as under:

(i). The initiation of the matter through registration of FIR of Case Crime no. 202 of 2024 under section 109, 317(5) of BNS along with Section 3/25 and 27 of Arms Act. - By bare perusal of the narration of the FIR, the same is well indicated by learned AGA that the entire story framed through the FIR is relating to several statements and the facts along with the evidences which has been broadly submitted in shape of charge-sheet before learned court concerned and if there is false implication as submitted by learned counsel for the applicant at the initial stage, the option was available before the applicant for challenging the same in shape of filing Criminal Misc. Writ Petition before this Court but it is admitted case of the applicant that the same has never been opted for.

(ii) The non-implication of the applicant which has been submitted by learned counsel for the applicant in respect of the CCTV footage- which was not preserved and over the application preferred at the behest of applicant, learned trial court accepted the prayer and directed concerned authority to preserve the CCTV footage and at the same time, it is crystal clear from the order dated 17.02.2025 that the specific direction

was issued to the prosecution to produce the preserved CCTV footage as and when required by learned trial court. The argument raised by learned counsel for the applicant in respect of proving non-involvement of the applicant through CCTV footage which has been preserved by the prosecution cannot be determined by this Court under the proceeding of Section 482 Cr.P.C./528 BNSS since the persons or the material which might be available in that CCTV footage will only be observed and is subject matter of trial to be determined and adjudicated by learned trial court only.

(iii) **The ground for recording statement from any private witness during course of inquiry conducted by concerned Investigating Officer** - is also not possible in connection to the narration of the FIR since it is the case of the prosecution that applicant opened fire upon police party and in retaliation to the same, he has been arrested and as such the spot where this incident happened cannot be presumed that the same may be witnessed by any private person otherwise this aspect is also amenable before learned trial court to look into and this cannot be the basis for declaring the proceeding as bad in the eye of law.

(iv) **The last ground which has to be dealt as taken up by learned counsel for the applicant that the entire Case Diary has been placed before learned court concerned in photo-copy whereupon cognizance of offence has been taken up** - The arguments raised by learned counsel for the applicant specifically in this issue is also baseless since as per the procedure, police report in shape of Case Diary along with other materials has to be preferred before learned concerned court in original whereupon the cognizance has already been taken up and at the same time photo copy of the CD has been mentioned by learned court of Chief Judicial Magistrate, Mathura which is mandatory to be filed for providing copy of the Case Diary to the accused and at no point of time, it has ever been mentioned by learned court concerned while passing order dated 07.11.2024 that the entire document whatsoever has been placed by

concerned Investigating Officer in photo-copy and as such there is hardly any illegality involved in the order dated 07.11.2024 passed by learned Chief Judicial Magistrate, Mathura.

(v) Last but not the least, the judgment relied upon by learned counsel for the applicant which has been rendered by Hon'ble Apex Court in case of Mahmood Ali and others (supra)- The entire determination and the observation whatsoever has been made by Hon'ble Apex Court is in respect of challenge of epigenis of the matter under Section 482 Cr.P.C. and under Article 226 of the Constitution of India which is precisely analysed under para 12 of the judgment which is reproduced herein below:

"At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of

multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged."

10. By thorough scrutiny of the entire judgment and fine reading of the para 12 of the judgment of **Mahmood Ali (supra)**, it is crystal clear that the judgment deals with the institution of case which comes before the Court (here it had been meant by Hon'ble Apex Court as High Court) invoking either the inherent power under Section 482 of Cr.P.C. or extraordinary jurisdiction under Article 226 of the Constitution of India to get the FIR or "criminal proceeding" quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR a little more closely. The Hon'ble Apex Court further defined that once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance etc. then the High Court could ensure that the FIR/complaint is very well drafted with all the necessary pleadings.

11. Learned counsel appearing for the applicant given his full potential for defining criminal proceedings as mentioned in the judgment mentioned above in respect of criminal proceedings arising after preferring report by police before learned court concerned under Section 173 Cr.P.C. which is slightly mistaken by the learned counsel appearing for the applicant. Herein, the judgment which has been rendered by Hon'ble Apex Court, the criminal proceedings relates to complaint preferred under sections 200, 202 Cr.P.C. which is epigenis of the institution of the matter apart from the State case which is amenable to be challenged in shape of FIR under Article 226 of the Constitution of India. The challenge of the proceedings instituted and initiated is well defined by Hon'ble Apex Court in two ways which is applicable before any aggrieved person for lodging or preferring application before police authority or before any competent court of law for taking cognizance over the complaint preferred at the

behest of informant. Hon'ble Supreme Court dealt both the proceedings which is the institution or the epigenis of the matter in shape of complaint under sections 200, 202 Cr.P.C. and the institution of FIR. In the instant matter, the FIR has been registered at Case Crime no. 202 of 2024 which is not ever been challenged by the applicant and at the time of institution of the instant proceedings, it is fairly admitted by learned counsel for the applicant that neither the charge sheet nor the order of taking cognizance of offence passed by learned Magistrate is under challenge whereas the entire proceeding of the matter which includes the FIR, charge-sheet, summoning orders and the order passed till today is put under challenge. The arguments raised by learned counsel for the applicant is not attracting the pith and substance and ratio of the judgment of **Mahmood Ali (supra)** as rendered by Hon'ble Supreme Court and as such the subject matter which is under challenge is entirely different to the dictum pronounced by Hon'ble Apex Court.

12. In view of aforementioned facts and circumstances and in the light of the judgment passed by Hon'ble Apex court which is not at all having any relevance in the instant matter, the application stands **dismissed** accordingly.

Order Date :- 23.5.2025

Shaswat

(Saurabh Srivastava,J.)