

**Court No. - 79**

**Case :-** APPLICATION U/S 482 No. - 16244 of 2024

**Applicant :-** Vishal Kumar Tiwari

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

**Counsel for Applicant :-** Alok Kumar Mishra, Savan Kumar

**Counsel for Opposite Party :-** Abhinav Shukla, G.A., Ram Shiromani Shukla

**Hon'ble Prashant Kumar, J.**

1. Heard Shri Sushil Shukla, learned counsel for the applicant, learned AGA for the State opposite party no.1 and perused the record.

2. The present application under Section 482 Cr.P.C. has been filed for quashing the impugned order dated 18.01.2024 passed by Additional Sessions Judge /F.T.C. Court No. 1, Prayagraj, in Sessions Trial No. 659 of 2023 (State vs. Ram Kailash and others), under Section 376, 452, 323, 506 I.P.C., Police Station Handia, District Prayagraj, by which the application of the applicant filed under section 227 Cr.P.C. on 09.01.2024 was rejected.

3. Facts enumerated in the instant application is that the informant-prosecutrix is Chachi (Aunty) of the applicant. She and her husband had long existing property dispute with the father and other uncles of the Applicant, which was filed by her husband namely Ramfer Tiwari before the Civil Judge (S.D.), Prayagraj registered as Original Civil Suit No. 1280 of 2019 and the same is pending.

4. As per the allegation contained in the F.I.R. which was lodged by the informant-prosecutrix, one Ram Kailash Tiwari who is father of the Applicant had committed rape upon her on several occasions on 18.3.2019, 1.5.20219 and 29.6.2019 by threatening her on gun point

and when she disclosed these facts to the villagers, on 02.07.2019 the said accused Ram Kailash Tiwari along with his two sons namely Applicant and Shubham as well as his two nephew namely Suraj and Amit forcefully entered into the house of prosecutrix and assaulted her. On intervention of villagers, they left her by threatening with dire consequences.

5. After lodging of the F.I.R. against Ram Kailash Tiwari (father of the Applicant), Applicant, his brother and cousins namely Shubham, Suraj and Amit, Investigating Officer proceeded and recorded statement under section 161 Cr.P.C., the prosecutrix stated that it was her family dispute and accused Ram Kailash Tiwari was her Jeth who did not do anything to her and that she had reconciled with him and she no longer was interested in prosecution.

6. However, in her statement recorded under section 164 Cr.P.C., she reiterated the allegations as levelled in the FIR assigning role of committing rape upon her, only to the Ram Kailash Tiwari, who is father of the applicant. In so far as role of the Applicant and his 3 other brothers and cousin are concerned, she merely alleged about assault committed by them on 2.7.2019. Importantly, she admitted that she and her husband were having family property disputed with Ram Kailash Tiwari and his family.

7. Informant was medically examined and her medical examination revealed that she received no external or internal injuries on her person, this fact was stated in the statement of Dr Veena Pandey of Women Hospital, Prayagraj.

8. Investigating officer examined the independent witnesses of the case who stated that the prosecutrix had instituted false case, against her Jeth Ram Kailash Tiwari and his sons who were studying only, with an object to ruin their academic career just to wreak vengeance from their father.

9. Based upon the evidence collected, the Investigating Officer of the case had submitted Charge-sheet No. 14 of 2020 on 12.1.2020 before the court concerned against the accused Ram Kailash Tiwari seeking his prosecution for committing offences as defined u/s 376, 452, 323, 506 IPC.

10. However as against the Applicant and his brother Shubhan, the Investigating Officer of the case sought their prosecution only for commission of offences as defined u/s 452, 323, 506 IPC only and no charge-sheet was filed against the cousins of the applicant namely Suraj and Amit.

11. After filing of the charge-sheet, learned Magistrate took cognizance and committed the matter to the Sessions for trial before the Additional Sessions Judge (FTC), Allahabad where trial proceedings as Session Trial No. 659 of 2019 (State Vs Ram Kailash Tiwari & ors) was registered.

12. During the pendency of trial, applicant moved an application under section 227 Cr.P.C. for discharge on 09.01.2024 before the trial court seeking his discharge from the instant proceedings, with the pleading that as there was no credible evidence including any medical evidence was found against him during investigation qua the applicant, therefore, he ought to be discharged from the case.

13. The trial court after looking the evidence on record rejected the application of applicant filed under section 227 Cr.P.C. vide order dated 18.1.2024, hence aggrieved therefrom the applicant has approached this Court preferring the instant application invoking its inherent power in the matter seeking quashing of the impugned order as well as entire impugned criminal proceeding in so far as it relates to the applicant as being abuse of process of the Court.

14. While entertaining the instant matter, the coordinate Bench of this Court vide order dated 16.05.2024, issued notice to the opposite party no. 2 and the office report shows that notice has been served personally to the opposite party no. 2. Even after service of notice informant chosen not to contest, as no counter affidavit has been filed in the matter.

15. Learned counsel for the applicant submitted that the only allegations of the informant-prosecutrix levelled qua the Applicant that she was assaulted by him on 1.7.2029 was without any material evidence either in form of oral evidence of witnesses or medical evidence thus, in absence of such evidence, it could not be said that there was prima-facie case qua the Applicant in so far as commission of offences u/s 452, 323, 506 IPC by him was concerned.

16. Since such offences were not relating to allegation of rape hence the sole testimony of the informant-prosecutrix could not be said to be sufficient to subject the Applicant further with rigor mole of trial proceedings

17. More so, in view of the fact that a family property disputes was pending between the informant-prosecutrix and Ram Kailash Tiwari, who is father of the Applicant, it was apparent that he was roped in with mala-fide intention on the part of the informant-prosecutrix who wanted to ruin his career and others boy's career in the family along with his said father who alone was assigned the role of committing rape upon her.

18. Therefore, on the ground of mala-fide and vexatious criminal proceeding even it be for commission of sexual offences (supported with statement of the prosecutrix under section 164 CrPC), the impugned criminal proceeding of the instant case becomes likely to be quashed by this Court for which the applicant humbly places

reliance upon the case of **Vineet Kumar & Ors Vs State of UP & Anr, (2017) 13 SCC 369** wherein Hon'ble Supreme Court placing reliance upon the decision of **Prashant Bharti Vs State (NCT of Delhi), (2013) 9 SCC 293** also upon the category (7) laid down in the case of **State of Haryana v. Bhajan Lal [1992 supp (1) SCC 335]** quashed the criminal proceeding involving offence of section 376 IPC finding that such proceeding were instituted by the prosecutrix with mala-fide intention and by way of counter blast to the earlier proceeding instituted by the accused-applicant therein against her and her husband.

19. He further submitted that learned trial court completely erred in its judicial approach to decide the discharge plea of the applicant when it observed that such plea can only be decided on merit of the prosecution evidence after such evidence is led before him during trial proceedings, inasmuch as it was incumbent upon the learned trial court not to act as mouthpiece of the prosecution instead to evaluate the entire prosecution material, of course with limited purpose, to find out if such material, without any rebuttal, indicates prima-facie commission of offences as levelled qua the applicant. It is the prosecution material appended with the charge-sheet, which alone is required to be gone into at that stage while deciding whether or not to subject any accused the rigours of trial proceedings. He further submitted that discharge application should be decided on the prosecution material alone and it is the verdict of acquittal or conviction that is decided on the basis of evidence later led before the learned trial court in form of testimonies of the prosecution or defense evidence. Therefore, the learned trial court failed to properly exercise its jurisdiction as vested in him under section 227 Cr.P.C. rendering his impugned order illegal qua the applicant.

20. Per contra, learned AGA has vehemently opposed the prayer and submitted that learned trial court had rightly rejected the application of discharge filed by the applicant on the basis of

evidence and therefore, there is no illegality, infirmity or impropriety in the impugned order and the same does not warrant any interference by this Court.

21. Heard the submissions advanced by learned counsel for the parties and perused the record.

22. It has been submitted that there was a history of property dispute between the applicant and family members of the applicant and of the informant-prosecutrix. The only allegation levelled against the applicant by the prosecutrix is that the applicant had assaulted her on 02.07.2019, this allegation is not supported by any evidence of any witness nor it has been supported by any medical evidence. Hence in the absence of any credible evidence it cannot be said that the applicant had assaulted the informant-prosecutrix. The allegation of rape is against Ram Kailash Tiwari. However the allegation against the applicant is under section 452, 323 and 506 I.P.C., this allegation cannot be the basis of whole testimony of the informant-prosecutrix. The case of the applicant is different from the case of Ram Kailash Tiwari, who is father of applicant.

23. Apparently as per the allegation levelled by the prosecutrix, prima facie no case is made out against the applicant under section 452, 323, 506 I.P.C. There are material contradiction in her statement recorded under section 161 & 164 Cr.P.C., even her evidence is not supported by medical evidence, therefore, the criminal proceedings initiated by the prosecutrix seems to be initiated just to put undue pressure because of family dispute of property between the parties.

24. The Hon'ble Supreme Court in the matter of **Vineet Kumar & others vs. State of U.P. and another, (2017) 13 SCC 369** has held as follows:-

*“ 39. The fact is that no medical examination was got done on the date of incident or even on the next day or on 7-11-2015, when the IO asked the complainant and her husband to get done the medical examination.*

*Subsequently It was done on 20-11-2015, which was wholly irrelevant. Apart from bald assertions made by the complainant that all the accused have raped her, there was nothing which could have led the courts to form an opinion that the present case is a fit case of prosecution which ought to be launched. We are conscious that the statement given by the prosecutrix/complainant under Section 164 CrPC is not to be lightly brushed away but the statement was required to be considered along with antecedents, facts and circumstances as noted above.”*

25. The Hon'ble Supreme Court in the matter of **State of Haryana Vs. Bhajan Lal 1992 Supp (1) SCC 335** has laid down the guidelines in para 41 and 102, under which circumstances the Court should, in its inherent power, entertain an application under Section 482 Cr.P.C. The guidelines are as follows:-

*“ 41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal, Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal.*

*102. (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.”*

26. Based on the holistic consideration of the facts and circumstances summarised in the foregoing two paragraphs; we are satisfied, that all the steps delineated by this Court in Rajiv Thapar case stand satisfied.

27. Looking into the facts and circumstances of the case, all the steps can only be answered in the affirmative. This Court, therefore have no hesitation whatsoever in concluding, that on the basis of the material available on record, the rejection of the discharge application (impugned order herein) is not justified, it is fit case where the applicant on the basis of evidence on record ought to have been discharged.

28. Accordingly, the instant application is **allowed** and the impugned order dated 18.01.2024 passed by Additional Sessions Judge /F.T.C. Court No. 1, Prayagraj, in Sessions Trial No. 659 of 2023 qua the applicant is **set aside**. Applicant is hereby discharged from the trial proceedings.

**Order Date :- 24.07.2025**  
Bhanu