

Court No. - 73

Case :- APPLICATION U/S 482 No. - 22208 of 2024

Applicant :- Abdul Wazid And 4 Others

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

Counsel for Applicant :- Indra Bhan Yadav

Counsel for Opposite Party :- G.A.,Law Kumar Pandey,Vikas Mani Srivastava

Hon'ble Raj Beer Singh,J.

1. This application under Section 482 Cr.P.C. has been filed seeking following relief:-

"It is therefore, most respectfully prayed that the Hon'ble Court may be pleased to allow the present application and quash the cognizance order dated 20.03.2023, Charge Sheet dated 14.03.2023 as well as entire proceeding of Case No.1118 of 2023 (State Vs. Mahboob and Others), arising out of Case Crime No.286 of 2022 under Sections 307, 504, 506, 120B I.P.C., Police Station Mirzapur, District Saharanpur, pending in the court of II-Special Court M.P./M.L.A. IInd Additional Civil Judge (S.D.)/Additional Chief Judicial Magistrate, Saharanpur, so far as applicants are concerned."

2. Heard Sri Anoop Trivedi, learned Senior Advocate, assisted by Sri Indra Bhan Yadav, learned counsel for the applicants, Sri Manish Goyal, learned Additional Advocate General, assisted by Sri Vikash Sahai, learned AGA for the State, Sri Vikas Singh, Advocate holding brief of Sri Vikash Mani Srivastava, learned counsel for the informant / opposite party no.2 and perused the material brought on record.

3. Learned Senior Advocate appearing for applicants submitted that the opposite party No. 2 has lodged first information report of this case on 16.12.2022, making false and baseless allegations and charge-sheet was submitted in a routine manner without proper investigation. The alleged incident has been shown of 16.12.2022 at 18:30 hours but first information report was registered with delay at 22:30 hours, whereas the distance of police station from alleged place of occurrence is only about five kilometre. Only one fire-arm injury has been shown to the opposite party No.2 and there is no independent witness of the alleged incident. It is clear from prosecution story that there is enmity between the opposite party No.2 and the father of applicant No. 1 to 4, namely, Iqbal @ Bala. The applicants are not named

in the first information report and they were not present at the spot. The role of causing sole injury to the opposite party No.2 has been assigned to co-accused Mahboob and no case under Section 307 IPC is made out against the applicants. There is absolutely no evidence of criminal conspiracy so as to implicate the applicants. It was submitted that there is business related dispute between opposite party No.2 and Iqbal @ Bala and that applicants were falsely implicated merely because they are related to said Haji Iqbal.

4. It was submitted that said Iqbal @ Bala has approached this Court for quashing of first information report but that petition was dismissed by this Court vide order dated 24.02.2023. Iqbal @ Bala has filed SLP before the Apex Court vide S.L.P. No.55 of 2023, wherein by order dated 30.01.2024 his interest was protected. Even before this case, the opposite party No.2 has falsely implicated the applicants in case vide first information report dated 04.06.2022 Crime No.127 of 2022, P.S. Mirzapur, District Saharanpur under Sections 420, 467, 468, 471, 342, 386, 504, 506 IPC. The applicants have filed Writ Petition No.7335 of 2022 before this Court for quashing of first information report of that case but the same was dismissed vide order dated 08.07.2022. Applicants have challenged said order by filing Criminal Appeal No. 2341 of 2023, wherein Hon'ble Apex Court has set aside the said order dated 08.07.2022 of this Court and quashed the proceedings of Crime No.127 of 2022. One first information report dated 02.08.2022 vide Crime No.195 of 2022, P.S. Mirzapur, District Saharanpur under Sections 376D, 506 IPC was registered against father of applicant No.1 to 4 and in that matter father of applicant No.1 to 4 has filed Writ Petition No.15172 of 2022 before this Court but the same was dismissed vide order dated 17.10.2022. The father of applicant No.1 to 4, namely, Haji Iqbal @ Bala filed Criminal Appeal No.2343/2023 before the Apex Court, wherein the order dated 17.10.2022 passed by this Court was set aside and criminal proceedings of said Case Crime No.195 of 2022 were quashed. In the similar way one first information report dated 19.09.2022 Crime No.224 of 2022 was lodged at police station Mirzapur, District- Saharanpur under Sections 395, 504, 506, 323 IPC against applicant No.1 and his father and some other family

members and in that matter also the proceedings were quashed by the Hon'ble Apex Court by order dated 08.08.2023. Hon'ble Apex Court in order dated 08.08.2023 [Criminal Appeal No.2340 of 2023] has observed that while exercising its jurisdiction under Section 482 Cr.P.C., the Court need not restrict itself only to the stage of case but to take into account the overall circumstances leading to initiation / registration of the case as well as material collected in course of investigation. It was submitted that Court should not decline to quash criminal proceedings only on the ground that accused has criminal history. One first information report dated 11.08.2022 Crime No.175 of 2022 was registered under section 506 IPC at Police Station Mirzapur District Saharanpur and first information report of that case was quashed by the Hon'ble Apex Court. Due to political rivalry and enmity, one first information report dated 10.01.2023 Crime No.7 of 2023 was registered at P.S. Mirzapur District Saharanpur under Sections 395, 386, 365, 342, 506 IPC and proceedings of that case were also quashed by the Apex Court vide order dated 08.08.2023. In the similar way, first information report dated 22.07.2018 Crime No.165 of 2018 was registered at Police Station Mirzapur, District Saharanpur under Section 2/3 U.P. Gangster and Anti-social Activities (Prevention) Act against applicant No.5, wherein during pendency of the matter before Apex Court, final report was submitted and same was accepted by the court concerned and consequently the appeal pending before the Apex Court was disposed of. One first information report dated 21.06.2022 Crime No.122 of 2022 was registered at Police Station Mirzapur District Saharanpur under Sections 376, 323, 354A IPC and Section 7/8 POCSO Act, wherein Apex Court has directed the accused to file discharge application. One first information report dated 26.05.2022 Crime No.110 of 2022 under Sections 420, 467, 468, 471, 386, 504, 506, 120B IPC was registered at Police Station Mirzapur, District Saharanpur against applicant No.1 and others and that first information report was quashed by this Court vide order dated 10.05.2024. Another first information report dated 07.07.2022 Crime No.156 of 2022 under Sections 147, 148, 386, 323, 420, 506, 392 IPC and Section 3(2)(Va) SC/ST Act was registered at Police Station Mirzapur, District Saharanpur

against applicants and their family members. In that case applicants have filed criminal writ petition for quashing of the FIR, which was allowed by this Court vide order dated 14.12.2022. It was pointed out that by order dated 30.01.2024 passed in S.L.P. (Crl.) No.5535 of 2023, the Hon'ble Apex Court has directed father of applicant nos.1 to 4, namely, Haji Iqbal to appear before the Investigating Officer and to cooperate in investigation and protect his interest and later on he was granted liberty to join investigation through video conferencing. Referring to facts of the matter, it was submitted that a number of false cases were lodged against applicants and co-accused Iqbal @ Bala and in some of those cases applicants have already been granted relief by this Court and by the Apex Court. This case has been lodged in the same series and the impugned proceedings are malicious and applicants have been falsely implicated due to enmity and political rivalry and due to the reason that they are related to said Iqbal @ Bala. It was submitted that in view of aforesaid facts and circumstances, the impugned proceedings are liable to be quashed. In support of his contentions, learned Senior Advocate has placed reliance upon following case laws:-

(i) Ram Prakash Chadha Vs. The State of Uttar Pradesh (Criminal Appeal No.2395 of 2023), decided on 15.07.2024

(ii) Randheer Singh Vs. The State of U.P. & Ors. (Criminal Appeal No.932 of 2021), decided on 02.09.2021

(iii) Kishore Samrite Vs. State of U.P. & Ors. 2013 (2) SCC 398

5. Learned Additional Advocate General as well as learned counsel for the informant have opposed the application and submitted that in view of allegations made in the first information report and the material collected during investigation, a prima-facie case is made out against the applicants. Learned AAG has referred case of **Manik B Vs. Kadapala Sreyes Reddy & Anr.** SLP (Crl) No.2924 of 2023 and submitted that at this stage, matter can not be examined meticulously. Whether the witnesses are trustworthy or not, the same has to be examined during trial and

the prosecution has to granted opportunity to prove its case during trial. There is no illegality or perversity in the impugned summoning order. Referring to statement of informant and other witnesses, it was submitted that prima facie case is made out and at this stage a mini trial can not be held. The application under Section 482 Cr.P.C. has been filed making false and baseless averments. The applicants are not named in the first information report but their involvement was revealed during investigation. One Mahboob was named in the first information report and he has disclosed the names of applicants and said Mahboob is closely related with applicants. The informant has also named applicants in his statement under section 161 CrPC. There is evidence that said co-accused Mahboob has made firing upon the informant at instance of the applicants. The version of informant is supported by his medical examination report as well by other witness namely Kamal Kishore and Mohd. Imran. Referring to facts of the matter, it was submitted that applicants were involved in conspiracy of the alleged incident.

6. It is further submitted that on the basis of material on record and medical examination report of injured, a prima-facie case under Section 307 IPC is made out. There is no illegality or perversity in the impugned summoning order. It was pointed out that in above referred Case Crime No.286/2022 Police Station Mirzapur, Saharanpur, the Hon'ble Apex Court has neither set aside the proclamation issued against Mohd. Haji Iqbal @ Bala nor the said proclamation was stayed, however he was permitted to appear before the Investigating Officer through video conferencing and the applicants are not entitled for any such relief. It was submitted that the inherent power should not be exercised to stifle a legitimate prosecution and at this stage it would not be proper to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. Referring to case of **Zandu Pharmaceutical Works Ltd. And Others Vs. Mohd. Sharaful Haue and another** 2005(1) SCC 122, it was submitted that it would be erroneous to assess the material and conclude that the case cannot be proceeded with and there should be no meticulous analysis

of the case before the trial to find out whether the case would end in conviction or acquittal.

7. It is further submitted that applicants are hardened and notorious criminals, having terror in society, and no one dares from public to depose against them. Learned AAG has referred statements of witnesses and other material on record and submitted that a prima-facie case is made out against the applicants and at this stage a mini trial can not be held and thus no case for quashing of impugned proceedings/summoning order is made out. Learned AAG and learned counsel for the informant have placed reliance upon following case laws:-

(i) R.P. Kapur Vs. State of Punjab AIR 1960 SC 866

(ii). Zandu Pharmaceutical Works Ltd. And Others Vs. Mohd. Sharaful Haque and another 2005(1) SCC 122

(iii) C.B.I. Vs. Aryan Singh etc. 2023 SCC Online SC 379

(iv) Manik B Vs. Kadapala Sreyes Reddy & Anr. SLP (Crl) No.2924 of 2023

(v) Minakshi Bala Vs. Sudhir Kumar and Others 1994 (4) SCC 142

(vi) State of Delhi Vs. Gyan Devi and Others 2000 (8) SCC 239. (vi) Amit Kapoor Vs. Ram Chander and another 2012 (9) SCC 460

(vii) Allaudin Khan Vs. State of Bihar,

8. I have considered the rival submissions and perused the record.

9. The legal position on the issue of quashing of criminal proceedings is well-settled that the jurisdiction to quash a complaint, first information report or a charge-sheet should be exercised sparingly, however, where the allegations made in the FIR or the complaint and material on record even if 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, the charge-sheet may be quashed in exercise of inherent powers under Section 482 of the Cr.P.C. In case of **R.P. Kapoor (supra)**, the Apex Court held:-

"It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under s. 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained."

10. In well celebrated judgement reported in AIR 1992 SC 605 **State of Haryana and others Vs. Ch. Bhajan Lal**, the Supreme Court has carved out certain guidelines, wherein FIR or proceedings may be quashed but cautioned that the power to quash FIR or proceedings should be exercised sparingly and the Hon'ble Court held as under:-

"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 channelized 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 1 1992 Supp 1 SCC 335 6 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 concerned Act (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 concerned Act, 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."

11. In case of **Zandu Pharmaceutical Works Ltd (supra)**, after referring to case

of **Bhajan Lal (supra)**, the Hon'ble Apex Court held as under:-

"As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] and Raghuraj Saran (Dr.) v. State of Bihar [AIR 1964 SC 1 : (1964) 2 SCR 336 : (1964) 1 Cri LJ 1] .] It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. [See Dhanalakshmi v. R. Prasanna Kumar [1990 Supp SCC 686 : 1991 SCC (Cri) 142] , State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , State of Kerala v. O.C. Kuttan [(1999) 2 SCC 651 : 1999 SCC (Cri) 304 : AIR 1999 SC 1044] , State of U.P. v. O.P. Sharma [(1996) 7 SCC 705 : 1996 SCC (Cri) 497] , Rashmi Kumar v. Mahesh Kumar Bhada [(1997) 2 SCC 397 : 1997 SCC (Cri) 415] , Satvinder Kaur v. State (Govt. of NCT of Delhi) [(1999) 8 SCC 728 : 1999 SCC (Cri) 1503 : AIR 1999 SC 3596] and Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401]."

12. In case of **Manik B (supra)**, in Para nos.6, 7 & 8, the Hon'ble Apex Court held as under:-

"6. Whether the testimony of the witnesses is trustworthy or not has to be found out from the examination-in-chief and the cross-examination of the witnesses when they stand in the box at the stage of such trial.

7. Such an exercise, in our considered view, is not permissible while exercising the jurisdiction under Section 482 Cr.P.C.

8. The scope of interference, while quashing the proceedings under Section 482 Cr.P.C. and that too for a serious offence like Section 302 of Indian Penal Code is very limited. The Court would exercise its power to quash the proceedings only if it finds that taking the case at its face value, no case is made out at all."

13. In case of **Amit Kapoor (supra)**, in Para nos.24 & 25, the Hon'ble Apex Court held:-

"Having examined the interrelationship of these two very significant provisions of the Code, let us now examine the scope of interference under any of these provisions in relation to quashing the charge. We have already indicated above that framing of charge is the first major step in a criminal trial where the court is expected to apply its mind to the entire record and documents placed therewith before the court. Taking cognizance of an offence has been stated to necessitate an application of mind by the court but framing of charge is a major event where the court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial. There are different categories of cases where the court may not proceed with the trial and may discharge the accused or pass such other orders as may be necessary keeping in view the facts of a given case. In a case where, upon considering the record of the case and documents submitted before it, the court finds that no offence is made out or there is a legal bar to such prosecution under the provisions of the Code or any other law for the time being in force and there is a bar and there exists no ground to proceed against the accused, the court may discharge the accused. There can be cases where such record reveals the matter to be so predominantly of a civil nature that it neither leaves any scope for an element of criminality nor does it satisfy the ingredients of a criminal offence with which the accused is charged. In such cases, the court may discharge him or quash the proceedings in exercise of its powers under these two provisions."

14. In case of **Ram Prakash Chadha (supra)**, in Para no.32, the Hon'ble Apex Court held as under:-

"32. We are at a loss to understand, how in the absence of ground for a prima facie case revealed from the materials produced by the prosecution a person who lost his money and lodged a complaint based on the information furnished by his employee can be implicated in an offence, that too a grave allegation of commission of an offence of custodial death amounting to murder, merely because he caused the presence of the person concerned before the Police Station unless the ingredients to attract criminal conspiracy to commit any specific offence in relation to Ram Kishore is available. If the case of the prosecution and the materials produced along with the charge are taken as true, they would only suggest that Ram Kishore was under the control of the police in the Police Station. In fact, that exactly is the prosecution case revealed from the final report dated 21.02.2000 filed in Crime No.371/1993."

15. Thus, it is clear that basic guidelines for quashing of charge-sheet / complaint

have been laid down in case of Bhajan Lal (supra). That legal position has been harnessed in several subsequent judgments of Hon'ble Apex. In case of **C.B.I. Vs. Aryan Singh (supra)**, it was observed by Hon'ble Apex Court where on conclusion of the investigation, the accused persons have been charge-sheeted, the observation of the High Court that the initiation of the criminal proceedings was malicious was not correct and whether the criminal proceedings was / were malicious or not, is not required to be considered at this stage. It was observed that the High Court has exceeded in its jurisdiction in quashing the entire criminal proceedings and applying the law laid down by this Court in catena of decisions on exercise of the powers at the stage of discharge and/or quashing the criminal proceedings. In case of **Allaudin Khan (supra)** the proceedings were quashed by the High court by appreciating evidence and considering contradictions in the statements of witnesses. The Apex Court held the High Court had no jurisdiction to appreciate the evidence of the proceedings under Section 482 Cr.P.C and whether there are contradictions or/and inconsistencies in the statements of the witnesses is essentially an issue relating to appreciation of evidence and the same can be gone into by the trial court during trial when the entire evidence is adduced by the parties and that stage was yet to come and thus, quashed the order of High Court. The case of **State of Delhi Vs. Gyan Devi (supra)**, pertains to the issue of charge / discharge and thus, it would have no applicability in the present matter. Similarly in case of **Minakshi Bala (supra)**, the Hon'ble Apex Court held once charges are framed under Section 240 CrPC, the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Sections 239 and 240 CrPC; nor would it be justified in invoking its inherent jurisdiction under Section 482 CrPC to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. It was held that in such exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence. Thus, in the instant matter this case law is of no help to the prosecution. There is no inflexible rule which would govern the exercise of the inherent jurisdiction but as carved out

in case of **State of Haryana V Bhajan Lal and R. P. Kapoor (supra)**, there are some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. Criminal proceedings may be quashed where institution or continuance of criminal proceedings against an accused person amount to the abuse of the process of the court. Similarly there may be cases where allegations made in the complaint / first information report and the material collected during investigation even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged. In such cases proceedings may be quashed by invoking inherent powers.

16. Reverting to the facts of the case in hand, perusal of record shows that informant Amit Jain has lodged first information report on 16.12.2022 at 22:30 hours against one Mahboob and one unknown person, alleging that on 16.12.2022 he has gone to see a plot situated near Global University and one Imran was also accompanying him. The car of informant was being driven by driver Kamal. At about 06.30 PM when they reached at main road, two persons came on a motorcycle and the person sitting on pillion seat was Mahboob. Said Mahboob took out a pistol and fired a shot, which has hit at left hand of the informant. The informant also took out his licensed pistol and made firing and started chasing said Mahboob and his companion. It was alleged that while informant was chasing the said miscreants, accused Mahboob stated that he (informant) was doing bad things for Haji Iqbal and his sons and that he (Mahboob) was asked to make firing upon informant. Accused Mahboob threatened that in case he (informant) did not desist from making complaints against Haji Iqbal @ Bala and his sons and brother, he would not be alive. The informant made a call to the police and later the Police took him to government hospital, Saharanpur. As per medical examination report, the informant has sustained LW of 5 X 0.9 size at his left arm and as per opinion of the doctor, said injury was caused by fire-arm. In his supplementary statement under Section 161 Cr.P.C., informant has developed his version and stated that said Mahboob has told that he was asked to kill the informant by applicants-accused and co-accused Iqbal @ Bala. Accused Mahboob has also disclosed that fact in his

statement before the police recorded during investigation. The driver of informant, namely, Kamal Kishore and another witness namely Mohd. Imran have also made similar statements.

17. Thus, from the aforesaid facts it is clear that the applicants were not present at the spot. They were not named in the first information report, which was lodged against one Mahboob and one unknown person. It appears that the applicants have been made accused with aid of Section 120B IPC, on the basis of statement of co-accused Mahboob, who as per prosecution version, after making firing upon informant, has exhorted by saying that he was asked by the applicants-accused and co-accused Iqbal @ Bala for attacking the informant. In view of attending facts it appears inherently improbable probable that after making fire upon the informant, co-accused Mahboob would state such thing to the informant. In normal course, the version of informant that while he was chasing the co-accused Mahboob and his companion and informant has also made firing upon co-accused Mahboob from his licensed pistol, said Mahboob has disclosed that he was asked by the applicants to kill the informant, appears absurd and does not inspire confidence. In view of attending facts, it appears that the said version has been developed only to frame the applicants-accused in the instant case.

18. Further, as stated above the involvement of the applicants was shown on the basis of conspiracy and there is no such specific evidence as to who were all the conspirators, where and when the conspiracy was hatched, what was the specific purpose of such conspiracy and whether it was relating to the attack on the informant. Thus, it appears that the basic ingredients to support the theory of conspiracy are lacking. The mere fact that after informant sustained injury while the informant was chasing the miscreants, said Mahboob has exhorted that he was asked by the applicants and Iqbal @ Bala their father to attack and kill the informant, would not be sufficient to satisfy the ingredients of offence under section 120-B IPC. The principal ingredient of the offence of criminal conspiracy under section 120 B IPC is agreement to commit an offence. There must be some

material to show that such an agreement can be proved through direct or circumstantial evidence. An agreement forms the core of the offence of conspiracy, and it must surface in evidence through some physical manifestation as held in case of **State of Kerala V P. Sugathan & Anr. 2** (2000) 8 SCC 203. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the applicants with the commission of the crime of criminal conspiracy. To prove the offence of conspiracy there must be some material so as to indicate some physical manifestation of agreement. The allegation that co-accused Mahboob has stated that he was asked by the applicants Iqbal @ Bala to attack the informant would not be sufficient to prosecute the applicants for offence under section 120-B IPC, particularly when said version lacks any credence. Once the charge of conspiracy under section 120-B IPC was ruled out against the applicants, there remains nothing against the applicants. It is also explicit from facts of the matter that applicants have been implicated in this case due to ulterior motive. As submitted by the learned Senior Advocate appearing for the applicants that in some of the cases lodged in a similar way, the applicants and co-accused Iqbal @ Bala have already been granted relief by the Hon'ble Apex Court and by this Court.

19. In view of aforesaid, it appears that no prima-facie case is made out against the applicants and the attending facts and circumstances show that the applicants have been implicated in this case with ulterior motive and the impugned proceedings are attended with mala fide for wreaking vengeance on them. Thus, the impugned proceedings are nothing but an abuse of the process of Court and thus, liable to be quashed. Accordingly, the entire impugned proceedings, including summoning order, of the aforesaid case against applicants, namely, Abdul Wazid, Javed, Afzal, Alishan and Mahmood Ali are hereby **quashed**.

20. The application under Section 482 CrPC is **allowed** in above terms.

Order Date :- 18.2.2025

'SP'/-