



2025:AHJ:68677

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 482 No. - 1988 of 2025

Rishipal And 2 Others

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Mandeep Singh, Sani Kumar
Counsel for Opposite Party(s)	:	G.A., Mohammad Zakir

Court No. - 75

HON'BLE SAMIT GOPAL, J.

1. List revised.
2. Heard Sri Mandeep Singh, learned counsel for the applicants, Sri Ajay Singh, learned AGA-I for the State/opposite party no. 1 and records have been perused.
3. This application u/s 482 Cr.P.C. has been filed by the applicants with the prayers to quash the entire criminal proceeding arising out of Chargesheet dated 22.07.2024, cognizance order dated 08.10.2024 in Case Crime No. 233 of 2024, u/s 452, 323, 354, 504, 506 IPC and 3(2)5A SC/ST Act, P.S. Anoopsahar, District Bulandshahar (State Vs. Bholambar and others) passed by Special Judge SC/ST (P.A.) Act, Bulandshahar.
4. The records shows that Mr. Mohd. Zakir, learned counsel appears on behalf of the opposite party no. 2 but his vakalatnama is not on record despite his name being printed in the cause list.
5. Office to trace it out and place it on record and make a note in the order sheet about it.
6. Opposite party no. 2 is also not present in person before this Court.
7. Notice has already been served on the opposite party no. 2 which is sufficient, as has already been stated in the order dated 3.4.2025 passed by a coordinate bench of this Court.

8. Counter affidavit dated 25.03.2025 of the State/opposite party no. 1 is on record.

9. Learned counsel for the applicants submits that he does not proposes to file any rejoinder affidavit to the same.

10. The matter is ripe for hearing and thus the Court proceeds to hear it.

11. The facts of the case are that a FIR was lodged on 22.6.2024 by the opposite party no. 2 against the applicants for offences u/s 452, 323, 354, 504, 506 IPC and Section 3(1)(da) and 3(1)(dha) SC/ST Act with the allegations that she is a house wife. On 17.6.2024 in the morning when she was cleaning the drain out side the house, her neighbor Rishipal came and asked her to clean his drain also on which, she refused to which Rishipal abused her and by using caste related words stated that this is her work and she has to do it. In the evening, she told about it to her husband Gurjeet Singh on which her husband made a complaint about it to Bholambar, the father of Rishipal, who also got ready to fight with them and then at about 08:00 pm all the three accused armed with *lathi*, *danda* and *sariya* by using caste related words came and by abusing entered in the house of the informant and assaulted her husband and Rishipal with an ill intention, caught hold of her and threw her on the ground due to which she became semi nude. On the shouts of the informant and her husband, Yogendra, Vishnu and other villagers came there and saved them. The accused then by extending threat ran away. She went to the police station and gave an application but no action was taken. She has then come with the application on which action be taken. Her application was addressed to the Senior Superintendent of Police concern.

12. The investigation in the matter took place and a charge sheet dated 22.07.2024 was filed against accused Rishipal for offences u/s 452, 323, 354, 504, 506 IPC and Section 3(2)(5a) of the SC/ST Act and against Bholambar and Rohit for offences u/s 452, 323, 504, 506 IPC and Section 3(2)(5a) of SC/ST Act being charge sheet no. 213 of 2024.

13. The Court of the Special Judge, SC/ST (P.A.) Act, Bulandshahr summoned the accused applicants for offences u/s 452, 323, 354, 504, 506 IPC and Section 3(2)5A of the SC/ST (P.A.) Act vide order dated

08.10.2024 to face trial. The present application thus has been filed before this Court with the prayers as aforesaid.

14. The submission of learned counsel for the applicants is that in so far as the present case is concerned, the same is a no injury case as no medical examination report of Gurjeet Singh, the husband of the informant/victim has seen the light of the day. It is further submitted that the summoning of the two applicants namely, applicant no. 2 Bholambar and applicant no. 3 Rohit for offence u/s 354 IPC is bad in the eyes of law in as much as, no charge sheet against them under the said section has been filed by the police. It is further submitted that even otherwise, the statement of the first informant recorded u/s 161 Cr.P.C. and 164 Cr.P.C. also does not state of any allegation under section 354 IPC against them. Learned counsel for the applicants has submitted that the court concerned cannot add or subtract any section while taking cognizance or summoning from that as mentioned in the charge sheet against the accused which is the law as has been held by the Apex Court in the case of **State of Gujrat Vs. Girish Radhakirshnan Varde: (2014) 3 SCC 695 (para 14)**. It is submitted that in so far as the summoning of the applicant no. 1 Rishipal is concerned, the same also is with mala fide intention as the allegations are false and concocted and with mala fide intention since, he is the neighbor of the opposite party no. 2 and he had given Rs. 1 lakh to her husband and on demanding back, the present FIR has been lodged. It is submitted that in so far as the other accused applicants are concerned, they were not present at the time of the initial dispute as alleged between applicant no. 1 and opposite party no. 2 but they have been made as an accused with ulterior motive. It is submitted that thus the present petition be allowed and the prayers as prayed be granted.

15. Per contra, learned counsel for the State opposed the prayer for quashing and the arguments of learned counsel for the applicants and submits that in so far as the applicant no. 1 is concerned, there are specific allegations against him after which charge sheet was submitted and he has been summoned. Even there are allegations against him of enraging the modesty of the first informant which has been supported by her during investigation and then charge sheet has been submitted under the said sections also. It is submitted further that in so far as the other two

applicants are concerned, charge sheet against them have not been submitted u/s 354 IPC but still the court concerned has summoned them under the said section along with other sections after going through the records vide order dated 8.10.2024. It is submitted that there are allegations against the said two accused also and thus even their petition with the aforesaid prayers be dismissed.

16. After having heard the learned counsel for the parties and perusing the records, it is evident that in so far as the applicant no. 1 Rishipal is concerned, he has been summoned by the court concerned under the offences in which charge sheet has been submitted against him. There are allegations against him in the present matter which have also been supported during investigation. In so far as the two other accused applicants namely, Bholambar and Rohit are concerned, no charge sheet against them under section 354 IPC has been submitted but still they have been summoned under the said section also vide order dated 8.10.2024. The law with regards to summoning of the accused is trite. The judgment of the Apex Court in the case of **State of Gujrat Vs. Girish Radhakirshnan Varde (Supra)** clearly states that while taking cognizance the court concerned cannot add or reduce the section. In the present case, the said two applicants Bholambar and Rohit although have been charge sheeted but not under section 354 IPC but still they have been summoned under the said section thus, their summoning under section 354 IPC is bad in the eyes of law. In so far as the quashing of the order of cognizance and the entire criminal proceedings is concerned, the present case does not fall within the four corners of the category of cases in which powers under section 482 Cr.P.C. can be exercised for quashing as has been held by the Apex Court in the case of **Neeharika Infrastructure (P) Ltd. v. State of Maharashtra : (2021) 19 SCC 401** and it has been observed and held as under:

?13. From the aforesaid decisions of this Court, right from the decision of the Privy Council in Khwaja Nazir Ahmad [King Emperor v. Khwaja Nazir Ahmad, 1944 SCC OnLine PC 29 : (1943-44) 71 IA 203 : AIR 1945 PC 18], the following principles of law emerge:

13.1. Police has the statutory right and duty under the

relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences.

13.2. Courts would not thwart any investigation into the cognizable offences.

13.3. However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on.

13.4. The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 CrPC is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court.)

13.5. While examining an FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

13.6. Criminal proceedings ought not to be scuttled at the initial stage.

13.7. Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule.

13.8. Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 CrPC.

13.9. The functions of the judiciary and the police are complementary, not overlapping.

13.10. *Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.*

13.11. *Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.*

13.12. *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.*

13.13. *The power under Section 482 CrPC is very wide, but conferment of wide power requires the Court to be cautious. It casts an onerous and more diligent duty on the Court.*

13.14. *However, at the same time, the Court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in R.P. Kapur [R.P. Kapur v. State of Punjab, 1960 SCC OnLine SC 21 : AIR 1960 SC 866] and Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426], has the jurisdiction to quash the FIR/complaint.*

13.15. When a prayer for quashing the FIR is made by the alleged accused, the Court when it exercises the power under Section 482CrPC, only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR.?

17. The Apex Court in the case of **Pradeep Kumar Kesarwani Versus State of Uttar Pradesh and Another : 2025 SCC OnLine SC 1947** has laid a four-step test for High Courts to follow while considering petitions for quashing criminal proceedings under Section 482 of the Code of Criminal Procedure. It has been held as under:

?20. The following steps should ordinarily determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:?

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the materials is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the

ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal - proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused. [(See:Rajiv Thapar v. Madan Lal Kapoor (Criminal Appeal No. 174 of 2013))]?

18. The present application thus, is **partly allowed** in so far as the summoning of the applicant no. 2 Bholambar and applicant no. 3 Rohit are concerned, only with regard to section 354 IPC. The summoning of the applicant No.2 Bholambar and applicant No.3 Rohit under Section 354 I.P.C. is set aside. However, the trial against them in the other sections may continue. The application in so far as relates to the applicant No.1 Rishipal is concerned lacks merit and is dismissed. The trial court shall proceed in the matter expeditiously without granting undue adjournment to either of the parties.

19. Pending application(s) if any, stand disposed of.

(Samit Gopal,J.)

April 1, 2026/Nisha