

Neutral Citation No. - 2024:AHC-LKO:81480

Reserved on 26.11.2024

Delivered on 05.12.2024

Case :- APPLICATION U/S 482 No. - 10510 of 2024

Applicant :- Harish Chandra

Opposite Party :- Union Of India Thru. Secy. Railway Board
New Delhi And 2 Others

Counsel for Applicant :- Jyotinjay Verma

Counsel for Opposite Party :- A.S.G.I.,Anurag Kumar Singh

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Sri Jyotinjay Verma, learned counsel for the applicant and Sri Anurag Kumar Singh, learned counsel for the C.B.I.

2. Learned counsel for the applicant has filed the supplementary affidavit, today in the Court, the same is taken on record.

3. By means of this petition filed under Section 528 of Bharatiya Nagrik Suraksha Sanhita, 2023 (henceforth referred to as the “BNSS”), the petitioner has prayed for the following relief:-

“(I) to set aside impugned order dated 07.11.2024, contained in Annexure No.1, and close criminal proceedings against the petitioner arising out of Criminal Case No.1816, F.I.R. bearing R.C.No.0062014A0024, charge-sheet under Sections 120-B r/w 420, 468, 471 & 201 I.P.C. and Sections 13 (2), 13 (1) (d) of Prevention of Corruption Act, 1988, CBI/ACB, Lucknow to the extent it relates to the present petitioner.”

4. By means of order under challenge, the learned trial court rejected the application of the applicant dated 29.07.2024 (Annexure No.2), which was filed for setting aside the sanction order dated 04.08.2017 and closing the criminal proceedings against the present applicant.

5. At this stage, I find it appropriate to refer the order dated 04.03.2022 passed by the Division Bench of this Court in

Criminal Misc. Writ Petition No.1085 of 2022; Harish Chandra vs. Union of India & another, which is filed as Annexure No.1 with the supplementary affidavit, whereby the Division Bench dismissed the aforesaid writ petition keeping it open to the petitioner to raise the issue regarding validity of the sanction order in the course of trial. In the aforesaid writ petition, the sanction order dated 04.08.2017 was assailed.

6. It is an admitted fact that the trial has not been started inasmuch as after filing of the charge-sheet against the present applicant, the learned trial court took cognizance thereof but the charges have not been framed as the present applicant did not appear before the learned trial court as on today, though he is on bail.

7. Therefore, it is clear that the applicant filed an application dated 29.07.2024 before the learned trial court before starting the trial, whereas the Division Bench vide order dated 04.03.2022 kept it open to the petitioner to raise the issue regarding validity of the sanction order in the course of trial.

8. The submission of learned counsel for the applicant was that it has been a consistent view of the Constitutional Court to the effect that the issue of sanction should be adjudicated at the earliest. Therefore, before participating in the trial proceedings the applicant opted to file an application dated 29.07.2024.

9. In support of the aforesaid arguments of learned counsel for the applicant has placed reliance of the dictum of Apex Court rendered in the case in re: ***D. Devaraja vs. Owais Sabeer Hussain*** reported in ***(2020) 7 SCC 695***.

10. Before advertng to the submissions of learned counsel for the applicant, it would be necessary to indicate here that in the

case in re: **D. Devaraja** (*supra*) order of the Karnataka High Court was assailed whereby the High Court disposed of the application of the appellant filed under Section 482 Cr.P.C. for quashing an order passed by the learned trial court taking cognizance of the complaint remitting the complainant back to the learned trial court to apply for discharge. Whereas in this petition, the applicant has not assailed the order of the learned trial court taking cognizance of the charge-sheet but has assailed the order of the learned trial court rejecting the application of the applicant for setting aside the sanction order. Therefore, the facts and circumstances of the present case and the case of **D. Devajara** (*supra*) are different.

11. The Apex Court in the case in re: **D. Devaraja** (*supra*) has observed in paras-70 & 71 as under:-

“70. To decide whether sanction is necessary, the test is whether the act is totally unconnected with official duty or whether there is a reasonable connection with the official duty. In the case of an act of a policeman or any other public servant unconnected with the official duty there can be no question of sanction. However, if the act alleged against a policeman is reasonably connected with discharge of his official duty, it does not matter if the policeman has exceeded the scope of his powers and/ or acted beyond the four corners of law.

71. If the act alleged in a complaint purported to be filed against the policeman is reasonably connected to discharge of some official duty, cognizance thereof cannot be taken unless requisite sanction of the appropriate Government is obtained under Section 197 of the Code of Criminal Procedure and/ or Section 170 of the Karnataka Police Act.”

12. In the present case, the Disciplinary Authority initiated the departmental proceedings for major penalty issuing the charge-sheet against the applicant on similar charges and the aforesaid departmental inquiry was concluded by imposing minor

punishment to the applicant. This is a case where the learned trial court took cognizance of the charge-sheet after perusing the sanction order dated 04.08.2017. So the cognizance of the charge-sheet has been taken after sanction order and that cognizance order has not been assailed by the applicant.

13. Notably, while passing the sanction order dated 04.08.2017 the Competent Authority perused the relevant material and arrived at conclusion that the present applicant should be prosecuted granting sanction for prosecution.

14. The Apex Court in the case in re: **D. Devaraja** (*supra*) in paras-68 & 69 has observed that even if an act done under colour of or in excess of such duty will not be ground enough to deprive the policeman of the protection of the government sanction for initiated of criminal action against him. It is also required for an act purported to be done in discharge of official duty and/ or act done under colour of or in excess of such duty or authority. The relevant extract of the aforesaid paras are as under:-

“68. If in doing an official duty a policeman has acted in excess of duty, but there is a reasonable connection between the act and the performance of the official duty, the fact that the act alleged is in excess of duty will not be ground enough to deprive the policeman of the protection of government sanction for initiation of criminal action against him.

69. The language and tenor of Section 197 of the Code of Criminal Procedure and Section 170 of the Karnataka Police Act makes it absolutely clear that sanction is required not only for acts done in discharge of official duty, it is also required for an act purported to be done in discharge of official duty and/or act done under colour of or in excess of such duty or authority.”

15. Sri Jyotinjay Verma, has also cited some judgments of Apex Court rendered in the cases in re: **Madan Mohan Singh vs. State**

of Uttar Pradesh reported in *A.I.R. 1954 S.C. 637 (Vol.41)*, *Central Bureau of Investigation vs. Ashok Kumar Aggarwal* reported in *(2014) 14 SCC 295* and *T. Takano vs. Securities and Exchange Board of India and another* reported in *(2022) 8 SCC 162* by submitting that the impugned sanction order has not been passed properly and despite the fact that the RDSO vigilance initiated a departmental inquiry for imposing major punishment but the applicant has been awarded minor punishment on the observation of the Inquiry Officer that there are administrative lapses but no malafide intention on the part of the present applicant is proved and the Recommending Authority observed that the sanction of the prosecution established by the C.B.I. does not appear to be reasonable, but the Appointing Authority granted sanction.

16. In the present case, the Competent Authority for the reiteration sake, considered all the material and evidences placed before it and passed the sanction order and the Competent Authority granting sanction is not obliged to follow the opinion of the Recommending Authority inasmuch the Sanctioning Authority is duty bound to pass order independently applying its judicious mind perusing the material placed before it. However, it is needless to say that the above applicant may take all pleas and grounds before the learned trial court establishing that the alleged act of the applicant is/ are totally unconnected with the official duty and there is no reasonable connection with the official duty. The learned trial court would be duty bound to consider those contentions and pleas of the applicant during the course of trial.

17. The Apex Court in the case in re: *C.S. Krishnamurthy vs. State of Karnataka* reported in *(2005) 4 SCC 81* has observed in para-9 as under:-

“9. Therefore, the ratio is sanction order should speak for itself and in case the facts do not so appear, it

should be proved by leading evidence that all the particulars were placed before the sanctioning authority for due application of mind. In case the sanction speaks for itself then the satisfaction of the sanctioning authority is apparent by reading the order. In the present case, the sanction order speaks for itself that the incumbent has to account for the assets disproportionate to his known source of income. That is contained in the sanction order itself. More so, as pointed out, the sanctioning authority has come in the witness box as witness 40 and has deposed about his application of mind and after going through the report of the Superintendent of Police, CBI and after discussing the matter with his legal department, he accorded sanction. It is not a case that the sanction is lacking in the present case. The view taken by the Additional Sessions Judge is not correct and the view taken by learned Single Judge of the High Court is justified.”

18. As considered above, the trial court has not framed the charges against the present applicant and the present applicant is armed with the right to oppose the charges taking all pleas and grounds which are available with him placing reliance of the judgments of the Constitutional Courts. Therefore, the learned trial court at the time of framing the charges would consider those pleas and grounds etc. of the applicant, if so taken.

19. The Hon’ble Supreme Court in the case in re: **State of Madhya Pradesh vs. Virender Kumar Tripathi** reported in (2009) 15 SCC 533 vide para-10 has observed as under:-

“10. In the instant case there was not even a whisper or pleading about any failure of justice. The stage when this failure is to be established is yet to be reached since the case is at the stage of framing of charge whether or not failure has in fact been occasioned was to be determined once the trial commenced and evidence was lead. In this connection the decisions of this Court in State v. T. Venkatesh Murthy [2004(7) SCC 763] and in Prakash Singh

Badal v. State of Punjab [2007(1) SCC 1] need to be noted. That being so the High Court's view quashing the proceedings cannot be sustained and the State's appeal deserves to be allowed which we direct.”

20. There is one more point in the present case which should be considered, which is an order dated 22.08.2023 passed by the Apex Court in the ***Special Leave to Appeal (Crl.) (No(s).9268 of 2022; Radhey Shyam vs. Union of India & others*** (Annexure No.3 of the supplementary affidavit) whereby the Apex Court has passed an order in the case of co-accused, Radhey Shyam, directing to dispose of the trial expeditiously possibly within a period of nine months but on account of various petitions having been filed by the present applicant the trial could not be started as on today. As per the material available on record, the present applicant started filing the petitions with effect from 2022 till date and all those petitions have been disposed of finally. For convenience, the order dated 22.08.2023 reads as under:-

“Having heard the petitioner-in-person at length and having perused the order passed by the High Court, which is impugned herein, though, the petitioner seeks to contend that the charge alleged against the petitioner is baseless, taking note of the manner in which the High Court has approached the issue and rendered its judgment, we see no reason to interfere at this stage since, all contentions on merits are left open for the petitioner to be urged in the trial.

However, taking note that the petitioner is a retired employee of Railways, we request the trial Court to take up the matter and dispose of the trial as expeditiously as possible but in any event, within a period of nine months from this day.

Petition is accordingly disposed of along with the pending application(s), if any.”

21. So far as the prayer for setting aside the charge-sheet is concerned, the Hon’ble Apex Court in the case in re: ***State of***

Haryana and others vs. Bhajan Lal and others reported in **1992 Supp. (1) SCC 335** has given guidelines in para-102 narrating the circumstances under which the F.I.R. and the criminal proceedings may be set aside. Though para-102 deals with the circumstances relating to the F.I.R., not the charge-sheet, but in para-103 the Hon'ble Apex Court has summarized holding that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases and the extraordinary or inherent powers under Section 482 Cr.P.C. do not confer an arbitrary jurisdiction on the Court to act according to its whim and caprice.

22. I had occasion to decide one application under Section 482 Cr.P.C. bearing ***Application (U/S 482 Cr.P.C.) No.4022 of 2021; Ramesh Yadav vs. State of U.P. & others***, wherein the petitioner of that petition had assailed the cognizance and commitment order as well as further proceedings of session trial, that petition was dismissed vide judgment and order dated 07.05.2022 considering the various dictums of Apex Court including the case of ***Bhajan Lal (supra)*** indicating paras-102 and 103 therein. Para-28 thereof reads as under:-

"28. The Hon'ble Apex Court in re; Amanullah and Another v. State of Bihar and Others, (2016) 6 SCC 699, while considering the scope of Section 482 Cr.P.C. has observed in paras 25 to 29 as under:-

"25. A careful reading of the material placed on record reveals that the learned CJM took cognizance of the offences alleged against the accused persons after a perusal of the case diary, charge-sheet and other material placed before the court. The cognizance was taken, as a prima-facie case was made out against the accused persons. It is well settled that at the stage of taking cognizance, the court should not get into the merits of the case made out by the police, in the charge-sheet filed by them, with a view to calculate the success rate of prosecution in that particular case. At this stage, the court's duty is limited to the extent of

finding out whether from the material placed before it, the offence alleged therein against the accused is made out or not with a view to proceed further with the case.

26. *The proposition of law relating to Section 482 CrPC has been elaborately dealt with by this Court in Bhajan Lal case [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . The relevant paras 102 and 103 of which read thus : (SCC pp. 378-79)*

"102. 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 channelised 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 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 Act concerned (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 Act concerned, 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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

27. Further, this Court in Rajiv Thapar v. Madan Lal Kapoor [Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158] has laid down certain parameters to be followed by the High Court while exercising its inherent power under Section 482 CrPC, in the following manner : (SCC pp. 347-49, paras 29-30)

"29. The issue being examined in the instant case is the jurisdiction [Madan Lal Kapoor v. Rajiv Thapar, 2008 SCC OnLine Del 561 : (2008) 105 DRJ 531] of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the

commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

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

30.2. 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?

30.3. 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?

30.4. 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?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. 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."

(emphasis supplied)

28. After considering the rival legal contentions urged by both the parties, case law referred to supra and the material placed on record, we are of the view that the High Court has exceeded its jurisdiction under Section 482 CrPC. It has erred in quashing the cognizance order passed by the learned CJM without appreciating the material placed before it in the correct perspective. The High Court has ignored certain important facts, namely, that on 17-10-2008, Appellant 1 was allegedly threatened by the accused Mukhtar for which FIR No. 104 of 2008 was registered against him for the offences punishable under Sections 25 and 26 of the Arms Act, 1959. Further, there are statements of various witnesses made under Section 164 CrP3C, before a Judicial Magistrate, to the effect that the deceased has been murdered by none other than her husband Mukhtar. The evidence collected by the IO by recording the statements of the prosecution witnesses, filed along with the charge-sheet was duly considered by the learned CJM before taking cognizance and therefore, the same should not have been interfered

with by the High Court in exercise of its inherent power under Section 482 CrPC.

29. Further, the High Court has failed to take into consideration another important aspect that the case at hand relates to the grave offence of murder and that the criminal proceedings related thereto should not lightly be interfered with, which is a well-settled proposition of law."

23. In the light of what have been considered above and also by perusing the impugned order dated 07.11.2024 passed by the learned trial court, I do not find any infirmity or illegality in the aforesaid order dated 07.11.2024 inasmuch the learned trial court has considered all the contentions and submissions of the learned counsel for the applicant, so raised in an application dated 29.07.2024, and decided the same by speaking and reasoned order. In the impugned order, the learned trial court quoted the order dated 04.03.2022 passed by the Division Bench of this Court, wherein this Court kept open to the petitioner to raise the issue regarding the validity of the sanction order in the course of trial. Since the sanction order dated 04.08.2017 has been assailed by the applicant by filing an application dated 29.07.2024, therefore, the pleas and grounds of the applicant have been rightly considered by the learned trial court in its impugned order dated 07.11.2024.

24. Besides, the charge-sheet has been filed after concluding the investigation collecting the evidence and material and cognizance thereof has been taken after the sanction order, so the charge-sheet is not liable to be quashed at this stage. The settled parameters by the Apex Court to quash the criminal proceedings before initiating the trial are not being attracted in this case, however, any appropriate order can be passed at the appropriate stage, strictly in accordance to law.

25. Therefore, I am also of the considered opinion that the High Court should exercise its jurisdiction under Section 482 Cr.P.C. for quashing the prosecution proceedings sparingly, with circumspection and in the rarest of the rare cases, only in any extraordinary circumstances and I have not seen any extraordinary circumstances in the present case to quash the charge-sheet and the consequential proceedings.

26. Accordingly, the instant petition fails and is ***dismissed***.

27. It is needless to say that the petitioner may take appropriate legal recourse before the appropriate court of law.

28. No order as to cost.

[Rajesh Singh Chauhan,J.]

Order Date :- December 05, 2024

Suresh/