RESERVED

A.F.R.

Court No. - 20

Case :- U/S 482/378/407 No. - 3023 of 2016
Applicant :- Santosh Kumar Yadav And Others
Opposite Party :- State Of U.P. And Anr.
Counsel for Applicant :- Kunwar Mukul Rakesh,Kunwar Shushant Prakash
Counsel for Opposite Party :- Govt. Advocate, Salil Kumar Srivastava

Hon'ble Mrs. Ranjana Pandya,J.

1. This Criminal Misc. Application under Section 482 Cr.P.C. has been preferred with the prayer to set aside the order dated 21.04.2016, passed by Additional Sessions Judge,Court No. 17, Lucknow, in Criminal Revision No. 28 of 2016 (Santosh Kumar Yadav and others vs. State of U.P. And another) arising out of order dated 03.11.2015, passed by Additional Chief Judicial Magistrate - Vth, Court No. 29, Lucknow and quashing of complaint dated 20.04.2015 in Criminal Misc. Case No. 1462 of 2015 (Smt.Sushma Yadav vs. Santosh Kumar and others), under Section 352, 498A, 457 I.P.C. and Section 4 D.P. Act, P.S. B.K.T., District Lucknow.

2. Counsel for the applicants has submitted that the present proceedings are nothing but abuse of the process of law. Opposite party no. 2 has left no stone unturned to harass the applicants. He has further submitted that in the garb of the application under

Section 156(3) Cr.P.C., the opposite party has reopened the matter which could not have been reopened.

3. Brief facts are that the opposite party no. 2 was married to the applicant no. 1 namely Santosh Kumar Yadav on 06.03.2011. As per the averments of the applicants, the opposite party no. 2 deserted the applicant no. 1 on 11.09.2011 when she was pregnant. She gave birth to a male child on 14.01.2012.The child was concealed by the opposite party no. 2 whereupon the applicants moved a Habeas Corpus Petition no. 231 of 2012 in which an inquiry was ordered. In the Inquiry, it was made to understand that the son of applicant no. 1 had died. The aforesaid Habeas Corpus Petition was decided granting liberty to applicant no. 1 to lodge a first information report against opposite party no. 2 regarding murder of the child. At this, a case was registered against the opposite party no. 2 and her family members on the behest of applicant no. 1. The matter was investigated and it was revealed that the son of applicant no. 1 was alive who was given in the custody of applicant no. 1. During the course of inquiry, the opposite party no.2 and her parents have submitted a fabricated death certificate of the son of applicant no. 1 issued by Dileep Gupta in an order to pressurise the applicant no. 1 and to conceal her activities. The opposite party no. 2 moved a false and fabricated application under Section 156(3) Cr.P.C. before the

concerned Magistrate, Lucknow which was rejected, vide order dated 15.04.2014. Against the aforesaid rejection order, the opposite party no. 2 preferred an application under Section 482 Cr.P.C., in which opposite party no. 2 was directed to file a complaint before the Magistrate. The opposite party no. 2 preferred a complaint which was registered and procedures under Section 200 and 202 Cr.P.C. were followed. On 01.11.2011, a compromise was entered into between the applicant no. 1 and opposite party no. 2, whereby the opposite party no. 2 obtained cash from the applicant no. 1 along with articles including motorcycle given at the time of marriage. After entering into the compromise as stated earlier, the first information report was lodged by the applicant no. 1 under the directions of the High Court which is pending after submission of charge sheet before the learned Magistrate and the instant complaint has been filed just to harass the applicants. A complaint and the statements of the witnesses speak about the falsity of the whole matter. The applicants Santosh Yadav, Muneshwar Yadav, Kusum Yadav and Pramod Yadav on the basis of complaint were summoned under Sections 352, 498A, 457 I.P.C. And 4 D.P. Act, while the applicants Raj Narayan Yadav, Priyanka Yadav and Virendra Yadav were summoned under Sections 498A I.P.C. And 4 D.P. Act.

4. It is note worthy that the number of accused persons have been increased from 4 to 8 by the opposite party no. 2. The summoning order is bad in the eyes of law which is illegal. No offence under Section 457 I.P.C. is made out. A similar application was moved by the opposite party no. 2. Allegations under Section 498A I.P.C. are false on the face of it. The present complaint is an improved reversion of the earlier application moved under Section 156(3) Cr.P.C. which was rejected by the learned Magistrate on 15.04.2014.

5. Against the aforesaid summoning order, the applicants preferred a Criminal Revision which was decided on 21.04.2016 against the applicants. The order of the revisional court again is illegal and has been passed ignoring the principles of law laid down. The impugned orders suffers from non application of mind, hence the order dated 21.04.2016 passed by Additional Sessions Judge, Court No. 17, Lucknow in Criminal Revision No. 28 of 2016 an order dated 03.11.2015 passed by ACJM-V, Court No. 29, Lucknow are liable to be quashed.

6. Sri Salil Kumar Srivastava, counsel for the opposite party no. 2 has vehemently argued that the applicants have exhausted all remedies available to them and now this Court while exercising its power under Section 482 Cr.P.C. cannot quash the orders

passed by both the courts below.

7. The learned counsel for the applicant has also relied upon ***2009 (66) ACC 643, Rajiv Modi Vs. Sanjay Jain and others***, in which the Hon'ble Apex Court has laid down that whole or part of cause of action must have arisen within the territorial jurisdiction of the court. Same must be decided on the basis of averments made in the complaint without embarking upon any inquiry. In the same Rajiv Modi's case (supra), the Hon'ble Apex Court has also laid down in para 33 as under:-

> *33. The cardinal principle's which requires to be kept in view while invoking powers under Section 482 of Cr.P.C. has been stated in the case of State of H.P. v. Pirthi Chand wherein this Court has observed that:*
>
> > *"When the court exercises its inherent power under Section 482, the prime consideration should only be whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the court." (Para 13)*
> >
> > *"It is thus settled law that the exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinise the FIR/charge-sheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into cognizable offence.*

> *After the investigation is conducted (sic concluded) and the charge-sheet is laid, the prosecution produces the statements of the witnesses recorded under Section 161 of the Code in support of the charge-sheet. At that stage it is not the function of the court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court could take cognizance of the offence on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out, no further act could be done except to quash the charge-sheet. But only in exceptional cases, i.e., in rarest of rare cases of mala fide initiation of the proceedings to wreak private vengeance, the court may embark upon the consideration thereof and exercise the power." (Para 12)*

8. Counsel for the complainant has argued that the court should be very cautious while exercising jurisdiction under Section 482 Cr.P.C. No intricate questions can be decided in jurisdiction exercised under Section 482 Cr.P.C. In this regard, the counsel for the complainant has argued that the only thing the Magistrate has to look into while passing the summoning order is whether there are sufficient grounds to proceed against the accused or not. The Magistrate found that there were sufficient grounds to proceed against the accused. Thus, section under which

the accused was summoned cannot be segregated from the offence.

9. As far as the inherent powers of the court are concerned, the inherent powers of the High Court have been laid down by the Apex Court in ***AIR 1989 Supreme Court 1, State of Bihar Vs. Murad Ali Khan and others***, in which it has been held as under:-

> *"6. The second-ground takes into consideration the merits of the matter. It cannot be said that the complaint does not spell-out the ingredients of the offence alleged. A complaint only means any allegation made orally or in writing to a Magistrate. with a view to his taking action, that some person, whether known or unknown, has 'committed an offence.*
>
> *It is trite jurisdiction under Section 482 Cr.P.C. which saves the inherent power of the High court, to make such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice, has to be exercised sparingly and with circumspection. In exercising that jurisdiction the High Court would not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. That is the function of the Trial Magistrate when the evidence comes before him. Though it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing, however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet do not in law constitute or spell-out any offence and that*

resort to criminal proceedings would, in the circumstances, amount to an abuse of the process of the court or not."

In Municipal Corporation of Delhi v. R.K. Rohtagi, [1983] 1 SCR 884 at p. 890:(AIR 1983 SC 67 at p.70) it is reiterated:

> *"It is, therefore, manifestly clear that proceedings against an accused in the initial stages can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In other words, the test is that taking the allegations and the complaint as they are, without adding or subtracting anything, if no offence is made out then the High Court will be justified in quashing the proceedings in exercise of its powers under Section 482 of the present Code."*

In Municipal Corporation of Delhi v. P.D. Jhunjunwala, [1983] 1 SCR p. 895 : (AIR 1983 SC 158 at p. 159) it was further made clear:

> *" . . . As to what would be the evidence against the respondents is not a matter to be considered at this stage and would have to be proved at the trial. We have already held that for purpose of quashing the proceedings only the allegations set forth in the complaint have to be seen and nothing further."*

10. It has been held that so far quashing of the complaints and inquiry on the basis of F.I.R. registered by the complainant are concerned, interference by the High Court with the same and quashing the proceedings by an elaborate discussion on merits of the matter and coming to the conclusion of Section 195 being a bar, is rather premature for the High Court to

come to the aforesaid conclusion. The scope of Section 482 has also been given in ***AIR 2004 Supreme Court 517, State of M.P. Vs. Awadh Kishore Gupta and others***, in which it has been held that the High Court cannot appreciate the evidence to conclude whether the material produced are sufficient or not for convicting the accused. The inquiry as to the probability, reliability, genuineness of allegations in the F.I.R. is totally beyond the scope of Section 482 as has been laid down in ***2000 CRLJ 2256, Udaipal Singh and others Vs. State of U.P. and another***.

11. Counsel for the applicants has submitted that it is well within the power of the court to examine the whole matter to prevent the abuse of the process of court. It has further been submitted that since both the courts below have committed material illegality in passing the impugned orders which has resulted in miscarriage of justice. This Court while exercising the jurisdiction under Section 482 Cr.P.C. can examine the legality of the orders.

12. Counsel for the applicants has placed reliance upon ***1995 SCC (4) 41, Shri Ganesh Narayan Hegde vs. Shri S. Bangarappa and others*** in which it has been held as under:-

> *"12.While it is true that availing of the remedy of the revision to the Sessions Judge under Section 399 does not bar a person from invoking the power of the High Court under Section 482, it is*

equally true that the High Court should not act as a second Revisional Court under the garb of exercising inherent powers. While exercising its inherent powers in such a matter it must be conscious of the fact that the learned Sessions Judge has declined to exercise his revisory power in the matter. The High Court should interfere only where it is satisfied that if the complaint is allowed to be proceeded with, it would amount to abuse of process of Court or that the interests of justice otherwise call for quashing of the charges. A few decisions of this Court may usefully be referred at this stage. In Mrs.Dhanalakshmi v. R.Prasanna Kumar & Ors. (AIR 1990 S.C.494) this Court stated in a case of similar nature:

> *"Section 482 of the Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases 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 is taken by the Magistrate it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in conviction or not. The complaint has to be read as a whole. If it appears on a consideration of the allegations, in the light of the statement on oath of the complainant that ingredients of the offence/ 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."

13. There is no quarrel in the proposition of law that the High Court should interfere where it is satisfied that if the proceedings are allowed to be proceeded with, would amount to the abuse of process of Court but the satisfaction of the court is must before orders are passed for quashing of the proceedings.

14. Counsel for the applicants has also submitted that in case the Court finds that the application under Section 482 Cr.P.C. is not tenable then it can be treated under Article 226 of the Constitution of India and the nomenclature under which a petition is filed is not relevant as per the law laid down in ***(1998) 5 Supreme Court Cases 749, Pepsi Foods Ltd. And another vs. Special Judicial Magistrate and others***.

15. I have said earlier at the time of summoning the accused, the only thing the Magistrate has to see is whether there are sufficient grounds to proceed against the accused or not.

16. In ***1992 Supp (1) Supreme Court Cases 335, State of Haryana and others vs. Bhajan Lal and others,*** in which it has been held as under:-

> "*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."

17. I have perused the impugned order of the Magistrate. The Magistrate has given a categorical finding that there are sufficient ground to proceed in the matter. At the time of summoning, the Magistrate do not have to examine whether the matter would come under any conviction or acquittal.

18. Sri Salil Kumar Srivastava, learned counsel for the opposite party no. 2 has submitted that when an application under Section 397 Cr.P.C. is filed by any party in the court of session and it is decided against him, the powers of Section 482 can only be invoked if the order of the Sessions Judge has resulted in the abuse of the process of the court and / or calls for interference to secure the ends of justice.

19. In the same context, counsel for the opposite party no. 2 has placed reliance upon ***G. Sagar Suri vs. State of U.P., (2000) 2 SCC 636*** in which it has been laid down as under:-

> *"8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the*

High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

This Court therein noticed a large number of decisions to opine that whenever the High Court comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of court and that the ends of justice require that the proceedings should be quashed, it would not hesitate to do so.

13. In Central Bureau of Investigation v. Ravi Shankar Srivastava, [(2006) 7 SCC 188] this Court while opining that the High Court in exercise of its jurisdiction under Section 482 of the Code does not function either as a court of appeal or revision, held :-

> *"7. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise."*

20. I am conscious of the legal position laid down in ***1980 Supp SCC 92, V. C. Shukla vs. State through***

CBI in which it has been held that sub-section (3) of Section 397, however, does not limit at all the inherent powers of the High Court contained in Section 482. It merely curbs the revisional power given to the High Court or the Sessions Court under Section 397(1) of the Code.

21. In ***(2001) 8 Supreme Court Case 522, Rajinder Prasad vs. Bashir and others,*** while discussing the same aspect of the matter, the Hon'ble Apex Court has observed as under:-

> *"We are of the opinion that when the earlier revision petition filed under Section 397 of the Code had been dismissed as not pressed, the accused-respondents could not be allowed to invoke the inherent powers of the High Court under Section 482 of the Code for the grant of the same relief. We do not agree with the arguments of the learned counsel for the respondents that as the earlier application had been dismissed as not pressed, the accused had acquired a right to challenge the order adding the offence under Section 395 of the Code and arraying four persons as accused-persons by way of subsequent petition under Section 482 of the Code. The object of criminal trial is to render public justice and to assure punishment to the criminals keeping in view that the trial is concluded expeditiously. Delaying tactics or protracting the commencement or conclusion of the criminal trial are required to be curbed effectively, lest the interest of public justice may suffer. For exercising power under Section 482 of the Code the learned Judge of the High Court relied upon a judgment of this Court in Krishnan & Anr. v. Krishnaveni & Ors. [1997 (4) SCC 241]. A perusal of the aforesaid judgment,*

however, shows that the reliance by the learned Judge was misplaced. This Court in Krishnan's case (supra) had held that though the power of the High Court under Section 482 of the Code is very wide, yet the same must be exercised sparingly and cautiously particularly in a case where the petitioner is shown to have already invoked the revisional jurisdiction under Section 397 of the Code. Only in cases where the High Court finds that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order was not correct, the High Court may, in its discretion, prevent the abuse of the process or miscarriage of justice by exercise of jurisdiction under Section 482 of the Code. It was further held:

> *10. "Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of provisions of Section 397(3) or Section 397(2) of the Code."*

22. From the perusal of the material on record and looking into the facts of the case, at this stage, it cannot be said that no offence is made out against the applicant. All the submissions made at the bar relate to the disputed questions of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C. At this stage, only prima facie case is to be seen in the light of the law laid down by Supreme Court in cases of ***R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal,***

1992 SCC (Cr.) 426, State of Bihar Vs. P.P.Sharma, 1992 SCC (Cr.) 192 and lastly ***Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283.*** The disputed defence of the accused cannot be considered at this stage. Moreover, the applicants have got a right of discharge under Section 239 or 227/228 Cr.P.C. as the case may be through a proper application for the said purpose and he is free to take all the submissions in the said discharge application before the Trial Court.

23. Thus, on the basis of the aforesaid discussions, the application has no force and is liable to be dismissed.

24. The application is, accordingly, dismissed.

Order Date :- 08.09.2016
sailesh