AFR

Court No. - 80/Reserved

Case :- APPLICATION U/S 482 No. - 1395 of 2022

Applicant :- Pankaj Tyagi

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Sundeep Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

Heard Mr Sundeep Shukla, learned counsel for the applicant and Shri Virendra Kumar Maurya, learned Additional Government Advocate assisted by Shri Prashant Kumar Singh, learned Brief Holder, representing the State of Uttar Pradesh and perused the record of the case.

By means of this application under Section 482 of the Code of Criminal Procedure (herein after referred to as "Cr.P.C."), the applicant has invoked the inherent jurisdiction of this Court for quashing the impugned charge sheet No. 263 of 2015 dated 09.07.2017, under Sections 354, 452, 323, 504, 506 IPC, cognizance and summoning order dated 17.7.2017 passed by the learned Judicial Magistrate-III, Meerut, order dated 25.10.2017 whereby the learned Magistrate issued bailable warrant as well as further proceedings of case No. 646 of 2014, pending in the court of Additional Chief Judicial Magistrate-V, Meerut.

Before considering the merits of the case, it would not be out of place to mention it here that in the instant case, the charge sheet was submitted way back on 09.07.2015, cognizance was taken thereon and

summoning order was passed on 17.07.2015, which were challenged by the applicant before this Court by filing the instant application on 12.1.2022, i.e. after about six and a half years. When, learned counsel for the applicant was confronted with the aforesaid delay in challenging the charge sheet, cognizance and summoning order, he submitted that the applicant was not aware about the initiation of the proceedings against him.

On a query by the Court that learned Magistrate in the order dated 25.10.2017 has specifically mentioned that "on the case being taken up, accused did not turn up, summon has already been served upon him, issue bailable warrant against him", learned counsel for the applicant has belied the order of the learned Magistrate by saying that aforesaid order has been passed by the learned Magistrate on the basis of conjecture and surmises. Averments to this effect has also been made by the learned counsel for the applicant in paragraphs 40, 41 and 42 to the affidavit filed in support of this application.

Such types of averments made by the applicant to explain the delay in filing this application are highly deplorable.

Now I proceed to consider the merit of the case.

The facts that formed the bedrock of this application in nutshell are that an application under Section 156(3) Cr.P.C. was moved by the victim on 01.09.2014 before the Judicial Magistrate-III, Meerut with the allegations that accused-Pankaj, who is the resident of the same village

used to stalk her with bad intention and was in search of making sexual relations with the applicant-victim for the last one year. On 01.7.2014, the accused, with an intention to outrage her modesty, caught hold of her, but the matter was resolved by the police by putting pressure on the family of the victim. On 27.8.2014, when the victim was sleeping in her room, at about 11.00 PM, accused barged into her room, swooped her and tried to commit rape upon her forcibly. On the shrieks of the victim, her mother wake up and apprehended the accused, but by using force, abusing and assaulting her mother, he managed to escape by extending threat that if the victim does not make sexual relation with him, he will attack her with acid. The incident was witnessed in the light of inverter. The application further mentions that she has given information to the police on 28.8.2014 and also sent a letter to the Senior Superintendent of Police, Meerut on 30.8.2014, but since, no action was taken by the police, she has filed the application under Section 156(3) Cr.P.C. supported by her affidavit.

The aforesaid application was allowed by the Judicial Magistrate-III, Meerut vide order dated 26.9.2014 and SHO concerned was directed to lodge an FIR and investigate the matter.

In pursuance of the order of the Magistrate dated 26.9.2014, the FIR was lodged on 28.9.2014 at case crime No. 646 of 2014, under Sections 354, 376, 511, 504, 506, 323, 452 IPC, police station Kharkhauda, sub-district Sadar,

district Meerut.

After lodging of the FIR, the law set into motion and investigation was carried out by the investigating officer and on culmination of investigation, the investigating officer submitted charge sheet against the applicant, on which cognizance was taken and accused-applicant was summoned, which is the subject matter of challenge in this application.

The main substratum of argument of learned counsel for the applicant is that the first information report was lodged on the basis of application and order passed under Section 156(3) Cr.P.C. for the incident which took place on 27.08.2014 by one Koshika impersonating herself as Neha on the basis of false, frivolous and cooked up story, whereas Neha has left for her heavenly abode on 13.05.2008. In support of his submission, learned counsel for the applicant has relied upon an undated death certificate issued by the New Delhi Municipal Council to show that Km. Neha died on 13.5.2008 at All India Institute of Medical Sciences, New Delhi. Learned counsel for the applicant further submits that statements recorded under sections 161 and 164 Cr.P.C. are false and manipulated.

Learned counsel for the applicant lastly submitted that the applicant has been falsely implicated in this case and no offence whatsoever is made out against the applicant. Under the facts and circumstances of the case, impugned charge-sheet, cognizance order, summoning

order and further proceedings initiated against the applicant are liable to be quashed by this Court.

Per contra, learned Additional Government Advocate representing the State submits that on 04.2.2022 when this case was taken up for the first time, on the submission advanced by the learned counsel for the applicant that the victim, who has lodged the application under Section 156(3) Cr.P.C. on 01.9.2014, has already died on 13.5.2008, State was directed to obtain instructions. On the basis of instructions, learned AGA submits that the death certificate produced by the learned counsel for the applicant is found fake and manipulated. Further, the applicant has never produced the said death certificate before the investigating officer during investigation to verify the truth or otherwise of the said certificate whereas the statement of the applicant was recorded by the investigating officer on 09.7.2015. To buttress his submission, learned Additional Government Advocate has produced before this Court death certificate of Km. Neha, issued by the Registrar, Birth and Death, Nagar Nigam, Meerut showing her death at Ring Road, Lohiya Nagar, Meerut on 24.9.2015. He has also produced a copy of paper cutting dated 25.9.2015 of Amar Ujala, Meerut Edition in which it was mentioned that Km. Neha died in road accident. Both the documents, produced by the learned Additional Government are kept on record and marked as "A".

Learned Additional Government Advocate further

submits that statement of the victim under section 161 Cr.P.C. was recorded on 07.10.2014 and supplementary statement under section 161 Cr.P.C. on 09.7.2015, whereas her statement under Section 164 Cr.P.C. was recorded in the case diary on 10.10.2014. In her statements, both under Section 161 Cr.P.C. and 164 Cr.P.C., the victim has fully supported the prosecution case by giving vivid description of the occurrence.

Learned Additional Government Advocate also submits that the allegations made in the FIR as well as material against the applicant, as per prosecution case, the cognizable offence against the applicant is made out. The criminal proceedings against the applicant cannot said to be abuse of the process of the Court. Hence this application is liable to be rejected.

Guidelines with regard to the exercise of jurisdiction by the Court under section 482 Cr.P.C. have been laid down by Apex Court from time to time.

In ***State of Haryana Vs. Bhajan Lal***, 1992 (51) SCC 335, Apex Court laid down certain broad tests to exercise the inherent power or extraordinary power of the High court. On the cost of repetition it is not necessary to reiterate the guidelines. Suffice it to state that they are only illustrative. The High Court should sparingly and only in exceptional cases, in other words, in rarest of rare cases, and not merely because it would be appealable to the learned Judge, be inclined to exercise the power to quash the FIR/Charge sheet/complaint.

In **Rupan Deol Bajal Vs. Kanwar Pal Singh Gill, 1995 (7) JT 299**, the Apex Court reiterated the above view and held that when the complaint or charge sheet filed disclosed prima facie evidence, the court would not weigh at that stage and fine out whether offence could be made out.

In State of ***Himachal Pradesh Vs. Pirthi Chand and another***, 1996 (2) SCC 37, Supreme Court held thus:

> *"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 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 witness 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 process of criminal is availed of in laying a complaint or FIR itself does not disclose at all any cognizable offence - the Court may embark upon the consideration thereof and exercise the power.

In ***State of Bihar Vs. Rajendra Agrawalla,*** 1996 SCALE (1) 394, the Apex Court observed as under:

"It has been held by this Court in several cases that the inherent power of the court under Section 482 of the Code of Criminal Procedure should be very sparingly and cautiously used only when the court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the court, if such power is not exercised. So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the First Information Report or the complaint together with the other materials collected during investigation taken at their face value, do not constitute the

offence alleged. At that stage it is not open for the court either to shift the evidence or appreciate the evidence and come to the conclusion that no prima facie case is made out."

These guidelines were reiterated by the Apex Court in **Central Bureau of Investigation Vs. Duncans Agra Industries Limited,** 1996 (5) SCC 592, **Rajesh Bajaj Vs. State NCT of Delhi**, 1999 (3) SCC 259 and **Zandu Pharmaceuticals Works Limited Vs. Mohd. Sharaful Haque and another** (2005) 1 SCC 122.

In **M/s Medchl Chemicals and Pharma P limited Vs. M/s Biological E. Limited and others,** JT 2000 (2) SC 426, Apex Court held thus:

" Exercise of jurisdiction under the inherent power as envisaged in Section 482 of the code to have the complaint or the charge sheet quashed is an exception rather a rule and the case for quashing at the initial stage must have to be treated as rarest of rare so as not to scuttle the prosecution. With the lodgment of First Information Report the ball is set to roll and thenceforth the law takes its own course and the investigation ensues in accordance with the provisions of law. The jurisdiction as such is rather limited and restricted and its undue expansion is neither practicable nor warranted."

In **Md. Allauddin Khan Vs. State of Bihar,** 2019

(6) SCC 107, the Magistrate took cognizance of the offence under Section 323, 379 read with Section 34 of the Indian Penal Code by holding that a prima facie case was made out against the respondents therein on the basis of allegations made in the complaint. Patna High Court set aside the order of Magistrate on appreciation of the evidence. The Apex Court, while setting aside the order of the Patna High Court, held thus:

> *"in our view, the High Court had no jurisdiction to appreciate the evidence of the proceedings under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C") because whether are 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 Judicial Magistrate during trial when the entire evidence is adduced by the parties. That stage is yet to come in this case."*

In **State of Madhya Pradesh Vs. Yogendra Singh Jadon and another, (**2020) 12 SCC 588, after the registration of FIR, a charge sheet under Section 420, 406, 409, 120-B IPC and 13(1)(d) and 13(2) of the Prevention of Corruption Act was filed. The Special Judge passed an order framing charges against Yogendra Singh Jadon and others. That order was challenged before the High Court by way of filing criminal revision. The High Court found that the offences under Sections 420 and 120-B IPC were

not made out. The Apex Court while setting aside the order of the High Court held that the High Court has examined the entire issue as to whether the offence under Sections 420 and 120-B is made out or not at pre trial stage. The power under Section 482 of the code of Criminal Procedure cannot be exercised where the allegations are required to be proved in court of law.

The Apex Court in **Rajeev Kourav Vs. Baisahab and others**, (2020)3 SCC 317, the High Court of Madhya Pradesh quashed the criminal proceedings on the basis of assessment of statements of the witnesses recorded under Section 161 Cr.P.C. The Apex Court set aside the order of the High Court by holding that statements of the witnesses recorded under Section 161 Cr.P.C. being wholly inadmissible in evidence cannot be taken into consideration by the Court, while adjudicating a petition filed under Section 482 of the Code.

In **Kaptan Singh Vs. State of Uttar Pradesh and others,** AIR 2021 SC 3931, the charge sheet was submitted by the investigating officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the place of incident and taking statement of the independent witnesses and even statement of the accused persons. The cognizance of the offence was also taken by the learned Magistrate. The High Court has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386

IPC initiated against the applicant.

The Apex Court while quashing the order of the Allahabad High Court, held that the High Court is not required to go into the merits of the allegations and /or to enter into the merits of the as if the High Court is exercising the appellate jurisdiction and /or conducting the trial. High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of poowers under Section 482 Cr.P.C. The High Court has failed to appreciate and consider the fact that there are very serious triable issue/allegations which are required to be gone into and considered at the time of trial. The High Court has lost sight of crucial aspects which have emerged during the course of the investigation.

In **State of Odisha Vs. Pratima Mohanty etc.** , 2021 SCC Online SC 1222, Apex Court, while quashing the order of Odisha High Court, held thus:

> *"It is trite that the power of quashing should be exercised sparingly and with circumspection and in rate cases. As per settled proposition of law while examining an FIR/complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather than an ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under*

Section 482 Cr.P.C. when after a thorough investigation the charge sheet has been filed. At the stage of discharge and/or considering the application under Section 482 Cr.P.C. the courts are not required to go into the merits of the allegations and/or evidence in details as if conducting the mini trial. As held by this Court the powers under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court."

In view of the aforesaid pronouncements of the Apex Court, I have examined the matter in its totality and I find that the case of the applicant does not fall within the categories of rarest of rare cases. This Court is of the view that the appreciation of evidence is a function of the trial court and this Court in exercise of power under Section 482 Cr.P.C. cannot assume such jurisdiction and put to an end to the process of trial provided under the law.

It is well settled by the Apex Court in the aforementioned judgments that the power under Section 482 Cr.P.C. at pre-trial stage should not be used in a routine manner, but it has to be used sparingly, only in such an appropriate cases, where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceedings or where allegations made in first information report or charge-sheet and the materials relied in support of thereof, taking on their face value and accepting in their entirety do not

disclose the commission of any offence against the accused.

This Court is further of the view that the grounds taken in the application reveal that many of them relate to disputed question of fact, which cannot be adjudicated by this Court at the pre-trial stage, which can be more appropriately gone into by the trial court at the appropriate stage. The applicant has an alternative statutory remedy of moving discharge application at the appropriate stage.

The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. At that stage the court below is not required to go into the merit and demerit of the case. Genuineness or otherwise of the allegations cannot be even determined at the stage of summoning the accused.

Having considered the facts, circumstances and nature of allegations against the applicant in the instant case, I am of the considered view that a prima facie cognizable offence is made out against the applicant. The impugned criminal proceeding under the facts of this case cannot said to be an abuse of the process of the Court.

In view of what has been indicated herein above, I am of the view that there is no good ground to invoke inherent power under Section 482 of the Code of Criminal Procedure by this Court.

Accordingly, the relief as sought by the applicant by

means of the instant application is hereby refused.

This application under Section 482 of the Code of Criminal Procedure is accordingly rejected.

The trial court is directed to proceed against the applicant in accordance with law.

Office is directed to transmit a copy of this order to the learned Trial Court with a week.

Dated: 16.3.2022

Ishrat