A.F.R.
Neutral Citation No. - 2024:AHC-LKO:29769

Court No. - 27

Case :- APPLICATION U/S 482 No. - 3307 of 2024

Applicant :- Sushri Shreya Verma And 4 Others
Opposite Party :- State Of U.P. Thru. Prin. Secy. Home U.P. Lko. And 2 Others
Counsel for Applicant :- Mukesh Kumar Tewari,Bhupinder Pal Singh
Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed,J.

1. Heard Shri Mukesh Kumar Tewari, learned counsel for the applicants, Shri Ashok Kumar Singh, learned A.G.A-I for the State-opposite parties and perused the material placed on record.

2. The instant application under Section 482 Cr.P.C. has been filed on behalf of the applicants with a prayer to quash the impugned charge sheet dated 27.03.2022 alongwith impugned summoning order dated 22.09.2023 arising out of Case Crime no.0045/2022 under Section 188, 171-H I.P.C., Police Station-Mohammadpur Khala, District-Barabanki as well as the entire proceeding of Criminal Case No.3149/2023 (State vs. Sushri Sherya Verma and others) pending before the court of Additional Chief Judicial Magistrate/F.T.C. Court No.38, Barabanki with a further prayer to stay the proceedings of the aforesaid case.

3. Learned counsel for the applicants submits that the father of the applicant No.1 was contesting on the post of Member of Legislative Assembly in Vidhansabha Elections, 2022 from the constituency of Kursi District-Barabanki. During that period on 29.01.2022, an F.I.R. was lodged by the opposite party no.3, the then In-charge, Mobile Squad Vidhansabha Kursi, District-Barabanki against the applicants alleging therein that due to ongoing elections of Vidhansabha in District-Barabanki, the model code of conduct

was enforced and on 28.01.2022 the applicant Nos.1 and 2 and about 50 other persons were canvassing in the election in Village Bhund Hamlet Sewali Gram Sabha Aalhemau and Jyoti without permission and the video of the canvassing programme went viral, which has been organized by applicants and others.

4. Learned counsel for the applicants further submits that on 01.02.2022, the Investigating Officer recorded the statement of the complainant, wherein he reiterated the same version of the F.I.R. and from perusal of the same no offence is made out against the applicants and the statements given by the complainant are not trust worthy and same is based on false and concocted facts.

5. Learned counsel for the applicants further submits that the Investigating Officer prepared the impugned charge sheet dated 27.03.2022 and on 22.09.2023, the learned trial court without applying its judicial mind, took cognizance and summoned the applicants to face trial on the basis of police report.

6. Learned counsel for the applicants further submits that the F.I.R. was registered under Sections 171 H and 188 I.P.C., which is without jurisdiction as Section 171 H of I.P.C. is described as non cognizable offence in the penal code and Section 195(1) Cr.P.C. specifically provides that no court shall take cognizance of any offence under Sections 172 to 188 except upon a complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. Thus, taking cognizance under Section 188 I.P.C. is also without jurisdiction.

7. Learned counsel for the applicants further submits that as per Section 2(d) Cr.P.C., the opposite party no.3 had no right to lodge the F.I.R. for offences as mentioned above rather he had to file the complaint only before the concerned court. He further submitted that not only the F.I.R. was registered but also the investigation was carried out and charge sheet was submitted without any jurisdiction.

8. Learned counsel for the applicants further submits that even if the entire story of the prosecution is accepted as true (only for the sake of argument though not admitted), Section 171 H of I.P.C. is not made out against the applicants.

9. Learned counsel for the applicants further submits that as per Section 190 Cr.P.C., it is evident that the concerned Magistrate can take cognizance of any offence on three conditions i.e. (i) Upon receiving a complaint of facts, (ii) Upon a police report, and (iii) Suo-moto.

10. Learned counsel for the applicants further submits that the impugned order dated 22.09.2023 passed by the learned Additional Chief Judicial Magistrate/F.T.C. Court No.38, Barabanki, by which the applicants were summoned, is also non speaking as the Magistrate has not considered any material available before him while summoning the applicants to face the trial. As such, the impugned order dated 22.09.2023 on the face of record appears to be unjustified, arbitrary, illegal and is passed without application of judicial mind, therefore, the same is liable to be set aside by this Court and the present application under Section 482 Cr.P.C. is liable to be allowed.

11. On the other hand, learned A.G.A. for the State opposed the argument advanced by learned counsel for the applicants and submits that the impugned summoning order dated 22.09.2023 is rightly passed and no interference by this Court is required in the instant matter, therefore, the instant application is liable to be dismissed at this stage only.

12. On careful perusal of the averments made in this application under Section 482 Cr.P.C. as well as after hearing the learned counsel for the parties, the factual matrix disclose that the o the opposite party no.3, the then In-charge, Mobile Squad Vidhansabha Kursi, District-Barabanki had lodged an F.I.R. against the applicants alleging therein that applicant No.1 whose father, namely-Rakesh Verma was contesting election for the post of Member of Legislative Assembly in the Vidhanshabha Election, 2022 and model code of conduct was enforced in the area. On 28.01.2022 the applicant Nos. 1 and 2

alongwith 50 persons were canvassing in support of Rakesh Verma without any prior permission.

13. First of all, it would be relevant to quote Section 195(1) Cr.P.C., which is being reproduced hereunder:-

> *"**195(1) Cr.P.C. :-** No Court shall take cognizance -*
>
> *(a)*
>
> *(I) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or*
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> *(ii) of any abetment of, or attempt to commit, such offence, or*
>
> *(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or other public servant to whom he is administratively subordinate;*
>
> *(b)*
>
> *(I) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or*
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> *(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476 of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or*
>
> *(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),*
>
> *[except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.] [Substituted by Act 2 of 2006, Section 3 for "except on the complaint in writing of that Court, of of some other Court to which that Court is subordinate" (w.e.f. 16-4-2006).]"*

14. From perusal of the aforesaid Section 195 (1) Cr.P.C., it is clear that the F.I.R. was registered without jurisdiction as Section 171 H of I.P.C. is described as a non-cognizable offence in the penal code whereas it is specifically mentioned that no Court shall take cognizance of any offence under Sections 172 to 188 I.P.C. except upon a complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. Thus, taking cognizance under Section 188 I.P.C. is also without jurisdiction.

15. It would further be relevant to quote Section 2(d) Cr.P.C. which is being reproduced hereunder:-

> *“"complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.”*

16. From perusal of the aforesaid Section 2(d) Cr.P.C., it is clear that the opposite party no.2 had no right to lodge the F.I.R. for offences as mentioned above rather he had to file the complaint only before the concerned Magistrate.

17. It would also be relevant to quote Section 171 H of IPC, which is being reproduced hereunder:-

> *“**171H.** Illegal payments in connection with an election "Whoever without the general or special authority in writing of candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees.*
>
> *PROVIDED that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate."*

18. From perusal of the aforesaid Section 171 H of I.P.C., it is clear that only a person other than the candidate of an election, can be made accused under Section 171 H of I.P.C. Therefore, there is substantial merit in the contention of the learned counsel for the applicant that the offence under Section 171 H of I.P.C. as made out would not lie.

19. It would also be relevant to quote Section 190 Cr.P.C., which is being reproduced hereunder:-

> ***"190.*** *Cognizance of offences by Magistrates.*
>
> *(1)Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence -*
>
> *(a)upon receiving a complaint of facts which constitute such offence;*
>
> *(b)upon a police report of such facts;*
>
> *(c)upon information received from any person other than a police officer or upon his own knowledge, that such offence has been committed.*
>
> *(2)The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try."*

20. From perusal of the aforesaid Section 190 Cr.P.C., it is clear that the concerned magistrate can take cognizance of any offence on three condidtions i.e. (i) Upon receiving a complaint of facts, (ii) Upon a police report, and (iii) Suo-moto.

21. Hon'ble the Supreme Court in the case of **Sachida Nand Singh and Another Vs. State of Bihar and Another; (1998) 2 SCC 493** was pleased to observe at para 7 as under:-

> *"Even if the clause is capable of two interpretation we are inclined to choose the narrower interpretation for obvious reasons. Section 190 of the Code empowers "any magistrate of the first class" to take cognizance of "any offence" upon receiving a complaint, or police report or information or upon his own knowledge. Section 195 restricts such*

general powers of the magistrate, and the general right of a person to move the Court with a complaint is to that extent curtailed. It is a well-recognised canon of interpretation that provision curbing the general jurisdiction of the court must normally receive strict interpretation unless the statute or the context requires otherwise."

22. Further, Hon'ble the Supreme Court in the case of **Daulat Ram Vs. State of Punjab; AIR 1962 SC 1206** was pleased to observe at para 4 as under:-

"Now the offence under s. 182 of the Penal Code, if any, was undoubtedly complete when the appellant had moved the Tehsildar for action. Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken. In making his report to the Tehsildar therefore, if the appellant believed that some action would be taken (and he had no reason to doubt that it would not) the offence under that section was complete. It was therefore incumbent, if the prosecution was to be launched, that the complaint in writing should be made by the Tehsildar as the public servant concerned in this case. On the other hand what we find is that a complaint by the Tehsildar was not filed at all, but a charge sheet was put in by the Station House Officer. The learned counsel for the State Government tries to support the action by submitting that s. 195 had been complied with inasmuch as when the allegations had been disproved, the letter of the Superintendent of Police was forwarded to the Tehsildar and he asked for "a calendar". This paper was flied along with the charge sheet and it is stated that this satisfies the requirements of s. 195. In our opinion, this is not a due compliance with the provisions of that section. What the section comtemplates is that the complaint must be in writing by the public servant concerned and there is no such compliance in the present case. The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant namely the Tehsildar in this case. The trial was thus without jurisdiction ab inito and the conviction cannot be maintained."

23. Further, Hon'ble the Supreme Court in the case of **M.S. Ahlawat Vs. State of Haryana and Another; AIR 2000 SC 168** was pleased to observe at para 5 as under:-

> *"Chapter XI of IPC deals with false evidence and offences against public justice' and Section 193 occurring therein provides for punishment for giving or fabricating false evidence in a judicial proceeding. Section 195 of the Criminal Procedure Code (Cr.P.C.) provides that where an act amounts to an offence of contempt of the lawful authority of public servants or to an offence against public justice such as giving false evidence under Section 193 IPC, etc. or to an offence relating to documents actually used in a court, private prosecutions are barred absolutely and only the court in relation to which the offence was committed may initiate proceedings. Provisions of Section 195 Cr.P.C. are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that Section. It is settled law that every incorrect or false statement does not make it incumbent upon the court to order prosecution, but to exercise judicial discretion to order prosecution only in the larger interest of the administration of justice."*

24. Now coming to the provision of first schedule of Cr.P.C., Section 171 H of Indian Penal Code is covered under the said provision which is declared as non-cognizable and bailable offence, and triable by the Magistrate of the First Class. Like wise classification of offence against other laws in Cr.P.C., it also describes, if any offence under any other law, if punishable for less than three years or with fine which shall be considered as non- cognizable, bailable and triable by the Magistrate of First Class.

25. On perusal of the above said provisions, it is abundantly clear that the offence registered against the applicant under Section 171H of IPC is non-cognizable in nature. Now, coming to Section 155(2) of Cr.P.C. which reads as follows:

> *"No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial"*

26. Particularly, Section 155(2) mandates the police concerned that such police officer shall investigate the non- cognizable offence with the permission of the Magistrate only. This Section describes that no Police

Officer shall investigate a non- cognizable case without the order of the Magistrate having power to try such case for trial.

27. The provision in sub Section (2) of Section 155 of Cr.P.C., for asking permission of the Court to investigate a non-cognizable offence is mandatory in nature. Therefore, the investigation of non-cognizable offence by the police without prior permission of the competent Magistrate is illegal. Even mere accepting the charge sheet by the Magistrate and taking the cognizance of the offence does not validate the proceeding. Even subsequent permission by the Magistrate also cannot cure the illegality. As could be seen from Section 460 of Cr.P.C. these defects of non- taking permission before investigating a non-cognizable offence is also not curable. Though the charge sheet is filed after due investigation without prior permission of the Court and that the Magistrate has accepted the charge sheet and taken the cognizance, it does not mean to show permission is granted by the Magistrate to investigate such non- cognizable offence. Therefore, investigation into the non-cognizable offence without written order of the Magistrate is strictly contrary to the provision of this Section.

28. This Court further finds that the above said two offences are non-cognizable offences. Therefore, as per Section 155(2) of Cr.P.C., the police have no right or jurisdiction to investigate the matter, without prior permission of the Magistrate, who has got jurisdiction to try those offences. Therefore, the entire charge sheet filed by the police is vitiated by serious incurable defects and procedural irregularities.

29. This Court further finds that the F.I.R. as well as the charge sheet, do not disclose that there was any cognizable offence made by the applicant, so as to enable the police to investigate both the cognizable and non- cognizable offences together and to file the charge sheet. Therefore, the entire charge sheet papers and on the basis of which the criminal case is registered is liable to be quashed.

30. This Court also finds that the trial court while summoning the applicants by impugned order has totally failed to appreciate the factual

and legal aspect of the matter. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.

31. Further, the Hon'ble Supreme Court of India in the case **Inder Mohan Goswami v. State of Uttaranchal (2007)12 SCC 1** has held that it would be relevant to keep into mind the scope and ambit of section 482 Cr.PC and circumstances under which the extra ordinary power of the court inherent therein as provisioned in the said section of the Cr.P.C. can be exercised, para 23 is being quoted here under:-

> *"23. This court in a number of cases has laid down the scope and ambit of courts powers under section 482 Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under section 482 Cr.P.C. can be exercised:*
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> *(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."*

32. Further, Hon'ble the Supreme Court of India in the case of **Lalankumar Singh and Others vs. State of Maharashtra** reported in **2022 SCC Online SC 1383** has specifically held in paragraph No.38 that the order

of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. Paragraph No.38 of **Lalankumar Singh and Others (supra)** is being quoted hereunder:-

> *"38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation, which reads thus:*
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> > *"51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.*
> >
> > *52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.*
> >
> > *53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be*

formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

33. Further, Hon'ble the Supreme Court of India has provided guidelines in case of **State of Haryana Vs. Bhajan Lal** reported in **1992 Supp (1) SCC 335** for the exercise of power under Section 482 Cr.P.C. which is extraordinary power and used separately in following conditions:-

"102.(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 F.I.R. 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 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."

34. Further the Apex Court has also laid down the guidelines where the criminal proceedings could be interfered and quashed in exercise of its power by the High Court in the following cases:- **(i) R.P. Kapoor Vs. State of Punjab, AIR 1960 S.C. 866, (ii) State of Bihar Vs. P.P. Sharma, 1992 SCC (Crl.)192, (iii) Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.) 283** and **(iv) Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra, AIR 2021 SC 1918**.

35. In **S.W. Palankattkar & others Vs. State of Bihar, 2002 (44) ACC 168**, it has been held by the Hon'ble Apex Court that quashing of the criminal proceedings is an exception than a rule. The inherent powers of the High Court itself envisages three circumstances under which the inherent jurisdiction may be exercised:-(i) to give effect an order under the Code, (ii) to prevent abuse of the process of the court ; (iii) to otherwise secure the ends of justice. The power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

36. In view of the above said facts and circumstances of the case, the investigation done by the police in this case is without jurisdiction and based on such invalid investigation report, the cognizance taken by the learned Magistrate is also illegal. Secondly, the entire proceeding before the learned Magistrate is vitiated by serious incurable defects.

37. Thus, in view of the law laid down by the Hon'ble Apex Court and the facts and circumstances, as narrated above and from the perusal of the record, the impugned charge sheet dated 27.03.2022 alongwith impugned summoning

order dated 22.09.2023 passed by learned Additional Chief Judicial Magistrate/F.T.C. Court No.38, Barabanki in Criminal Case No.3149/2023 (State vs. Sushri Sherya Verma and others), arising out of Case Crime No.0045/2022, under Sections 171 H and 188 of I.P.C., Police Station Mohammadpur Khala, District-Barabanki., as well as the entire criminal proceedings in pursuance thereof are against the spirit and directions issued by the Hon'ble Apex Court and are liable to be set aside.

38. Accordingly, the impugned charge sheet dated 27.03.2022 alongwith impugned summoning order dated 22.09.2023 passed by Additional Chief Judicial Magistrate/F.T.C. Court No.38, Barabanki in Criminal Case No.3149/2023 (State vs. Sushri Sherya Verma and others), arising out of Case Crime No.0045/2022, under Sections 171 H and 188 of I.P.C., Police Station Mohammadpur Khala, District-Barabanki as well as the entire criminal proceedings in pursuance thereof are hereby **quashed**.

39. For the reasons discussed above, the instant application under Section 482 Cr.P.C. is **allowed** in respect of the instant applicants.

40. Learned Senior Registrar of this Court is directed to transmit a copy of this order to the trial court concerned for its necessary compliance.

(Shamim Ahmed,J.)

Order Date :- 09.04.2024
Piyush/-