Court No. - 15

Case :- APPLICATION U/S 482 No. - 3054 of 2023

Applicant :- Ram Jag Prazapati And 3 Others
Opposite Party :- State Of U.P. Thru. Its Secy. Home Deptt. Lko. And Another
Counsel for Applicant :- Pramod Kumar
Counsel for Opposite Party :- G.A.

Hon'ble Ajai Kumar Srivastava-I,J.

Heard learned counsel for the applicants, learned A.G.A for the State and perused the entire record.

This application under Section 482 Cr.P.C. has been filed by the applicants for quashing the impugned charge sheet dated 23.09.2021 filed in Criminal Case No.8711/2022, arising out of Case Crime No.0204/2021, under Sections 452, 323, 504, 342 I.P.C., Police Station Dostpur, District Sultanpur.

Learned counsel for the applicants has submitted that the charge-sheet has been filed without there being any evidence whatsoever against them. He has further submitted that there is no evidence whatsoever in support of the charge sheet neither there is any material to frame the charge against the accused nor the proceeding can fruitfully be continued against them. His further submission is that the entire prosecution story as narrated in the FIR is improbable and unbelievable. It has further been submitted by learned counsel for the applicants that pendency of the instant criminal proceedings against the applicants is nothing but an abuse of the process of Court and, therefore, the impugned criminal proceedings be quashed.

Per contra, learned A.G.A. for the State controverts the submissions of learned counsel for applicants on the ground that this is not a stage where minute and meticulous exercise

with regard to the appreciation of evidence may be done and truthfulness of the allegations could only be tested in a criminal trial and, therefore, the application is misconceived and liable to be dismissed.

The exposition of law on the subject relating to the exercise of the extraordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC is well settled and to the possible extent, Hon'ble Supreme Court has defined sufficiently channelised guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

In **State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335** the Hon'ble Supreme Court in paragraph no.102 has held as under:-

> *"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 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."

The Hon'ble Supreme Court in the case of **Rathish Babu Unnikrishnan v. State (NCT of Delhi), 2022 SCC OnLine SC 513** in para nos.16, 17 and 18 has held as under:-

> "*16. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.*
>
> *17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the*

complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.

18. Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial Court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited."

It is no doubt true that the power of quashing of criminal proceedings should be exercised very sparingly and with circumspection and that too in rarest of the rare cases and it was not justified for the Court 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 inherent powers do not confer any arbitrary jurisdiction on the Court to act according to its whims and fancies.

Hon’ble Supreme Court in the case of Satish Kumar Jatav vs. State of U.P., 2022 LiveLaw (SC) 488 has held that the ground that “no useful purpose will be served by prolonging the proceedings of the case” cannot be a good ground and/or a ground at all to quash the criminal proceedings when a clear case was made out for the offence alleged. Likewise in Ramveer Upadhyay vs. State of U.P., AIR 2022 SC 2044 the Hon’ble Supreme Court held that the jurisdiction under Section 482

Cr.P.C. is not to be exercised for asking. In exercise of power under Section 482 of the Cr.P.C., the Court does not examine the correctness of the allegations in a complaint/F.I.R. except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. Entertaining a petition under Section 482 Cr.P.C. at an interlocutory stage itself might ultimately result in miscarriage of justice.

In view of the aforesaid settled law, this Court has adverted to the entire record of this case. The submissions made by the applicants' learned counsel undoubtedly call for adjudication on pure questions of fact which may be adequately adjudicated upon only by the trial court and while doing so even the submissions made on points of law can also be more appropriately gone into by the trial court in this case. This Court does not deem it proper, and therefore cannot be persuaded to have a pre-trial before the actual trial begins. A threadbare discussion of various facts and circumstances, as they emerge from the allegations made against the accused, is being purposely avoided by the Court for the reason, lest the same might cause any prejudice to either side during trial. Therefore, this Court does not find any justification to quash the proceedings against the applicants arising out of them as the case does not fall in any of the categories recognized by the Apex Court which may justify their quashing.

Accordingly, the prayer for quashing the proceedings under challenge is refused as this Court does not find any illegality, impropriety and incorrectness in the same. There is no abuse of court's process either.

It is needless to mention that if the applicants appear before the

learned trial Court and apply for grant of bail, the learned trial Court shall consider and decide the same expeditiously, in accordance with law laid down by the Hon'ble Supreme Court in **Satender Kumar Antill Vs. Central Bureau of Investigation and others** : **(2021) 10 SCC 773**.

With the aforesaid observations, the application is finally **disposed of**.

Order Date :- 31.3.2023
A.Dewal