

A.F.R.
Reserved

Court No. - 68

Case :- APPLICATION U/S 482 No. - 5500 of 2023

Applicant :- Asif Ahmad Siddiqui

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Dr. C.P. Upadhyay

Counsel for Opposite Party :- G.A., Harbansh Prasad Pandey

Hon'ble Mrs. Manju Rani Chauhan, J.

1. Heard Mr. Dr. C.P. Upadhyay, learned counsel for the applicant, Mr. Pradeep Kumar Mishra, Advocate holding brief of Mr. Harbansh Prasad Pandey, learned counsel for the informant and Mr. Amit Singh Chauhan, learned AGA for the State.

2. The present 482 Cr.P.C. application has been filed to quash the order dated 30.01.2023 passed by Additional District and Sessions Judge/Special Judge, POCSO Act, Allahabad in Special Sessions Trial No.2/2023 arising out of Case Crime No.173 of 2022, under Sections 323, 363, 328, 376Gha(Ka), 377, 504, 506 IPC and Section 5/6 POCSO Act, Police Station - Shankargarh, District - Prayagraj.

3. The brief facts as enumerated in the writ petition are as follows:-

i) an FIR was lodged on 26.06.2022 at about 19:23 hrs. by Akbar Ali under Sections 366, 504 IPC, which was registered as Case Crime No.0173 of 2022 against three persons, namely, Nazim, Hashim and Khurshid with the allegations that the informant's minor daughter, 15 years old, was enticed away by Nazim son of Samsuddin, resident of Nari Bari, Mobile No.9198997737 on 21.06.2022. Since the aforesaid date, Nazim was not available at his residence and his mobile number was also switched off. When the informant went to Nazim's house, his brother; Hashim and brother-in-law; Khurshid, used

abusive words and also spoke ill about the informant's daughter. After making efforts for tracing her daughter, an application was given on which the present FIR has been lodged.

ii) during investigation, the statement of the victim u/s 161 Cr.P.C. was recorded on 25.08.2022, which finds place at C.D. Parcha No.6 (after more than two months of the FIR), wherein she herself has stated that her father's name is Akbar Ali and she is resident of Surval Chandel, Nari Bari, P.S.Shankargarh, Prayagraj. She is aged about 19 years old and for fighting with her brother and sister, she was scolded by her mother and being annoyed, she left her house on 22.06.2022 at about 01:00 o'clock and went to Ajmer Sharif. Thereafter, she talked to her sister on telephone and got to know that FIR has been lodged by her father, hence she returned back, by herself, to Prayagraj.

iii) Subsequently, the victim Nazia was medically examined on 27.08.2022 and during course of medical examination, she has stated before the doctor that the co-accused Nazim came to her house on 22.06.2022, when she was sleeping, she was made to smell some intoxicating substance due to which she fainted and after regaining her conscious, she found herself at Allahabad where a person named Asif was also present. She also stated that both the persons, i.e. Nazim and Asif, who have forcefully committed rape upon her for two days, later on, she was taken to Jammu where she was kept for two months and forcefully, physical relationship was established with her by them. The victim was dropped to Allahabad on 25.08.2022 by Nazim and three unknown

persons and she was left near police station.

iv) Thereafter, the statement of the victim under Section 164 Cr.P.C. was recorded on 30.08.2022, which finds place in CD Parcha No.7, wherein she has stated that she is 15 years old. While she was sleeping at her house on 22.06.2022 in the night at about 02:00 a.m., Asif Siddiqui, resident of Nari Bari and Khurshid came there and made her smell some intoxicating substances due to which she became unconscious and after regaining conscious, she found herself at Allahabad where she was locked in a room and the aforesaid persons forcefully established physical relationship with her. Thereafter, Asif and Nazim fully aware and conscious did wrongful act with her. They, also beat and forcibly establish natural and unnatural physical relationship with the victim. She was kept for two days at Allahabad, thereafter, Nazim threatening the victim, took her to Jammu, where he committed rape upon her for two months relentlessly. She was also threatened by Nazim for her life and her father's life in case of denying to fulfill his wish. As she fell ill due to repeated forceful sexual assault, the accused-Nazim left her at Allahabad, whereafter she was taken by Niyaz Khurshid to Sankargarh police station, who left her there. After recording the statement under Section 164 Cr.P.C., the victim was handed over to her father as is evident from page 47 of the application.

v) Subsequently, the statement of mother of victim, Gudiya (wife of the informant) recorded on 06.09.2022, which finds place in CD Parcha No.IX, wherein she has stated that her 15 years old daughter was enticed away by Asif Siddiqui son of Kamal, resident of Nai Bazar,

Karma, P.S.-Ghoorpur, District-Prayagraj and Khurshid son of Abdul Razzak, resident of Badokhar, P.S.-Koraon, District-Prayagraj on 22.06.2022 at about 02:00 in the night. The victim was made to smell some intoxicating substance due to which she became unconscious and, thereafter, she was taken to Naribari market, where she was offered tea in which some intoxicating substance was mixed, after consuming which, she became unconscious. She was then taken to Allahabad where she was locked in a room and forceful physical relationship was established by Asif Siddique and Nazim, son of Samsuddin, resident of Nari Bari, P.S. Sankargarh, Prayagraj. They beat her and forcibly established natural and unnatural physical relationship with the victim. She was kept for two days in Allahabad and, thereafter, she was taken by Nazim to Jammu, where Nazim did wrongful act with her for two months, after threatening to kill her and her father, in case she does not permit him to do the wrongful act. After repeatedly being sexually exploited by Nazim, when she became ill, she was dropped by Nazim to Allahabad, from where Khurshid took her to Police Station-Sankargarh and left there. It has also been stated that all the aforesaid facts about the incident was narrated by the victim to her mother.

vi) After investigation, first charge sheet has been submitted as Charge Sheet No.188 of 2022 by the police against Khurshid only, whereas investigation continued for the other accused persons. Thereafter, the co-accused Nazim was arrested by the Police. In the meantime, the informant has approached before this Court by means of filing a criminal writ petition No.19896 of 2022 for fair

and partial investigation wherein the co-ordinate bench of this court vide order dated 20.12.2022 was pleased to direct the respondents therein for expeditiously fair and partial investigation.

vii) Thereafter, the Investigating Officer requested for CDR of the aforesaid accused persons including the applicant as is evident from S.C.D. Parcha No.VI dated 16.12.2022.

viii) An application was moved by the applicant before the Investigating Officer mentioning therein that the contradictions in the statement of the victim under Section 164 Cr.P.C., the mother of the victim and all the facts about the CDR as detailed in parcha no.VI dated 16.12.2022. On the aforesaid application of the applicant, second statement of the mother of the victim was recorded on 17.12.2022, which finds place in S.C.D. Parcha no.VII, wherein the specific question was raised by the Investigating Officer regarding statement of the victim under Section 164 Cr.P.C., in which the victim has stated about Asif Siddiqui, Nari Bari, whereas the victim's mother in her statement stated that Asif Siddique son of Kamal, resident of Nari Bazar, Karma, Police Station-Ghoorpur, Prayagraj. The question, as to how the victim's mother recognized Asif and on what basis, she has stated the address as Karma, in place of Nari Bari, she has stated that she does not know Asif and she has narrated everything as has been told by her husband about Asif. She has also specifically stated that Asif is not related to her, she has given the address of Asif as told by her husband. Her husband's nephew Mohd. Akhtar resides at Nai Bazar, Karma.

ix) Subsequently, the Second charge sheet being charge sheet no.188A of 2022 dated 27.12.2022 has been submitted against Nazim and Hasim. Hence all the three accused named in the FIR has been chargesheeted. The applicant was not charge sheeted in the present case as there was no evidence against him for his involvement in the aforesaid offence.

x) After submission of the aforesaid charge sheet against all the accused named in the FIR, an application was moved by the informant before the Additional District and Sessions Judge, Prayagraj under Section 190(1)(B) CrPC for summoning the accused-applicant stating therein that on the basis of statement of the victim under Section 164 CrPC, the involvement of the applicant is clear and *prima facie* case is established against the applicant. The concerned Magistrate without applying his judicial mind and solely relying upon the statement of the victim under Section 164 Cr.P.C. has summoned the applicant passing a non-speaking and unreasoned order dated 30.01.2023. Hence the present case has been filed.

4. Learned counsel for the applicant has challenged the summoning order as well as the entire proceedings on the following grounds:-

i) the impugned summoning order dated 30.01.2023 has been passed without application of judicial mind, solely relying upon the statement of the victim under Section 164 Cr.P.C.

ii) from the material collected by the Investigating Officer, no *prima facie* case is made out against the applicant.

iii) the court concerned proceeded to summon the

applicant, without appreciating the contradictions with respect to date of incident, identity of the applicant while giving his address at Nari Bari as well as change in her version, while narrating the incident.

iv) the applicant is not named in the FIR, his name does not find place in the statement of the victim under Section 161 Cr.P.C. and it is for the first time, while giving her statement before the doctor, that too as Asif, without disclosing his parentage and address his involvement in the incident has been narrated.

v) the name of the applicant is disclosed in the victim's statement under Section 164 Cr.P.C. as Asif Siddiqui of Nari Bari, thus from the aforesaid, the involvement of the applicant, who is resident of Nai Bazar, Chak Ghan Shyamdas, Post-Karma, Police Station-Ghoorpur, cannot be proved.

vi) in order to falsely implicate the applicant and meet out the deficiency, first statement of the victim's mother was recorded on 06.09.2022, wherein for the first time, proper name, parentage and address of the applicant has been disclosed as told by the victim to her mother, whereas in her second statement, she stated that she does not know the applicant nor is he related to her and she has further stated that she has disclosed about the applicant as told by Akbar Ali (her husband).

vii) the involvement of the applicant is also not established in the C.D.R. details as collected by the Investigating Officer.

viii) the charge-sheet has been submitted against the persons, who are named in the FIR and the applicant has

been exonerated, there being no evidence against him but on the informant's application u/s 190 (1)(b) CrPC, the applicant has been summoned, which is against settled position of law.

5. Learned counsel for the applicant further submits that while entertaining the final report as submitted against the accused persons, wherein the applicant was exonerated, there are two remedies provided to the informant, either to move protest petition for further investigating or move an application u/s 319 Cr.P.C. for summoning of the applicant after the examination of the prosecution witnesses. The concerned Magistrate has entertained the informant's application u/s 190(1)(b) Cr.P.C. and summoned the applicant without considering the aforesaid fact.

6. Learned counsel for the applicant further submits that the concerned Magistrate has summoned the applicant, without entering into genesis of the fact, evaluating the evidence, and has only relied upon the statement of the victim under section 164 Cr.P.C.

7. Learned counsel for the applicant further submits that in case, statement of the victim u/s 164 Cr.P.C. is believed in totality then the name of the accused-applicant Asif of Nari Bari, P.S.Sankargarh, Prayagraj would come into picture in place of applicant, who is resident of Nai Bazar, Karma, P.S.Ghoorpur, Prayagraj, therefore, the applicant's involvement in the aforesaid case cannot be proved.

8. He further submits that seeing the variations at different places, there is nothing on record to prove that the applicant is the person whose involvement is found in the incident and that too solely relying upon the statement under Section 164 Cr.P.C. Placing relying upon the judgment of the Apex Court in the case of **Nahar Singh vs. State of U.P.** reported in **(2022) 5 SCC 295**, he submits that Magistrate is not empowered to take cognizance on an offence on the basis of police

report in terms of section 190(1)(b) Cr.P.C. and issue summons to the persons, who are not arraigned as accused in the charge sheet and only on the basis of material as collected by the investigating officer.

9. Learned counsel for the applicant, therefore, submitted that the present criminal proceedings initiated against the applicant are not only malicious but also an abuse of the process of the court of law. On the cumulative strength of the aforesaid submissions, it is submitted by learned counsel for the applicant that the proceedings of the above mentioned criminal case are liable to be quashed by this Court.

10. *Per contra*, learned AGA for the State as well as learned counsel for the informant submits that the contention regarding the fact that there are variations with respect to name of the applicant, who is not named in the FIR as well as regarding his address and parentage and there is no evidence in this regard to prove that the applicant is the person, who has committed the offence, it is submitted that the victim is very clear with respect to the fact that she has been sexually exploited by the applicant Asif Siddiqui about whom she has stated in her statement under Section 164 Cr.P.C. as well as the statement before the doctor, hence minor contradictions cannot go to prove that the applicant is innocent. They further submits that at the stage of taking cognizance by the Magistrate as per the provisions contained in Section 190(1)(b) CrPC, the concerned Magistrate has to see as to whether *prima facie* case is being made out against the applicant. In the instant case, the concerned Magistrate has rightly allowed the application of the informant after considering the statement of the victim u/s 164 Cr.P.C. as well as the evidences collected by the Investigating Officer including the statements of the witnesses. They further submits that all other contentions raised by the applicants' counsel relate to disputed questions of fact.

11. Lastly, the learned A.G.A. as well as learned counsel for the informant states that the High Court may not quash the entire criminal

proceedings under Section 482 Cr.P.C. at the *pre-trial* stage, for which he has relied upon the judgment of the Apex Court in the case of **Mohd. Allauddin Khan Vs. The State of Bihar & Others** reported in *2019 0 Supreme (SC) 454*, wherein the Apex Court has held that the High Court had no jurisdiction to appreciate the evidence of the proceedings under Section 482 Cr.P.C. because whether there are contradictions or/and inconsistencies in the statements of the witnesses is an essential 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. However, in the present case the said stage is yet to come. They have further relied upon the judgment of the Apex Court in the case of **Rajeev Kaurav Vs. Balasahab & Others** reported in *2020 0 Supreme (SC) 143*, wherein the Apex Court has held that it is no more *res integra* that exercise of power under Section 482 CrPC to quash a criminal proceeding is only when an allegation made in the FIR or the charge sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of process of any law or Court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the Court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a *prima facie* case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding.

12. On the cumulative strength of the aforesaid submissions, learned A.G.A. as well as the learned counsel for the informant states that this Court may not exercise its inherent power under Section 482 Cr.P.C.

in the present case, and hence the present application is liable to be rejected.

13. I have considered the submissions made by the learned counsel for the parties and gone through the records of the present application.

14. Before proceedings further, it is apposite to give reference of Section 190 Cr.P.C., which is as under:-

“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.”

15. After the close scrutiny of the aforesaid Section, the Court finds that section 190(1)(b) CrPC does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(b) and direct the issue of process to the accused.

16. This Court finds substance in the contention raised by the learned counsel for the opposite party no.2 as well as learned A.G.A. that *prima facie* case for the alleged offence is made out against the applicant. In the statement of the victim u/s 164 Cr.P.C. as well as the statement before the doctor, there is specific allegation against the applicant regarding sexually assaulting the victim.

17. As regards the first contention raised by the learned counsel for the applicant regarding the contradictions in the name of applicant, his address and parentage, the Court observed that the victim with whom such an incident has happened, is in a sense of shock and not in a state of mind to tell the details of incident in a proper manner. There are minor contradictions, which cannot be seen here. The applicant shall have ample opportunity to prove his innocence during trial as such the allegation made against him cannot be sifted at this stage. At the time of taking cognizance, the Magistrate has only to see whether *prima facie* there are cogent reasons for issuing the process.

18. With respect to the second submission that the Magistrate cannot summon the other accused at the time of taking cognizance, even though the material exists has no force and the same has been reiterated by the Apex Court in the case of **Nahar Singh (supra)** upon which learned counsel for the applicant has relied, where while discussing the divergent views of different Benches of this Court, it has been held that the question of summoning the persons, who are not arrayed as an accused in the charge-sheet or police report, cannot be determining factor for summoning such persons and does not constrict exercise of such power of the Court taking cognizance in respect of persons such categories.

19. It is not disputed by the learned counsel appearing for the parties that the Magistrate is empowered to take cognizance under Section 190(1) CrPC in either of the three contingencies namely:-

- (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.

20. The cognizance of the offence can be taken on the basis of the

police reports as envisaged in Clause (b) of Section 190(1) CrPC irrespective of the opinion of the Investigating Officer that *prima facie* no case is made out, if the material collected and the statements of the witnesses recorded under Section 161 CrPC, in the opinion of the Magistrate, are sufficient to make out a *prima facie* case against the accused persons.

21. Thus the position is very clear and well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issuance of process to the accused. ***Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused.*** The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a), though, it is open to him to act under Section 200 or Section 202 also.

22. The legal position is quite clear. Once a final report is submitted against some body and simultaneously a charge sheet is submitted against the others, if the Magistrate takes cognizance on the basis of the charge sheet and accepts the final report, a protest petition will lie and if such protest petition has all the ingredients mentioned in Section 2(d) of the Code of the Criminal Procedure, it can be treated

as a complaint and proceedings of complaint case may go on involving Sections 200 and 202 CrPC. The Magistrate can then pass an order according to law. In other cases, where the charge-sheet has been submitted against few accused and others have been exonerated, the Magistrate is not bound by the conclusion of the Investigating Officer and he, after applying his judicial, mind can proceed to issue process on the de facto complainant's application.

23. This Court comes on the issue whether it is appropriate for this Court being the Highest Court to exercise its jurisdiction under Section 482 Cr.P.C. to quash the charge-sheet and the proceedings at the stage when the Magistrate has merely issued process against the applicant and trial is to yet to come only on the submission made by the learned counsel for the applicant that present criminal case initiated by opposite party no.2 are not only malicious but also abuse of process of law. It is no more *res integra* that exercise of power under Section 482 CrPC to quash a criminal proceeding is only when an allegation made in the FIR or the charge sheet constitutes the ingredients of the offence(s) alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of process of any law or Court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the Court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is clear from the law laid down by the Apex Court that if a *prima facie* case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding.

24. In the case of ***State of Haryana Vs. Bhajan Lal reported in 1992 AIR 604***, the Apex Court in paragraph 102 has enumerated 7 categories of the cases where power under Section 482 Cr.P.C. can be exercised by this Court, which are quoted below:-

"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 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."

25. The principles laid down by the Apex Court in the aforesaid case, have consistently been followed in the recent judgement of three-Judge Bench of the Apex Court in the case of ***Neeharika Infrastructure (P) Ltd. vs. State of Maharashtra reported in (2021) SCC OnLine 315*** wherein it has been held that there is no denial of the fact that power under Section 482 Cr.P.C. is very wide, but as observed by this Court in catena of decisions, referred to hereinabove, conferment of wide power requires the court to be more cautious and it casts an onerous and more diligent duty on the court. Therefore, in exceptional cases, when the High Court deems it fit, regard being had to the parameters of quashing and the self-restraint imposed by law, may pass appropriate interim orders, as thought apposite in law, however, the High Court has to give brief reasons which will reflect the application of mind by the court to the relevant facts.

26. It is trite law that the power of quashing criminal proceedings should be exercised with circumspection and that too, in the rarest of rare cases and it was not justified for this Court in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the Final report or the complaint. A finding on the veracity of a material relied on by the prosecution in a case where the allegations levelled by the prosecution disclose a cognizable offence, is not a consideration for the High Court while exercising its power under Section 482 Cr.P.C. This view is fortified by the decision of the Apex Court in ***Mahendra K.C. v. State of Karnataka and Ors.*** Reported in ***AIR 2021 SC 5711***.

27. In recent relevant judgement of the Apex Court in the case of ***Shafiya Khan @ Shakuntala Prajapati vs. State of U.P.***, reported in ***(2022) 4 SCC 549***, it was observed as under;-

“16. 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.”

28. The Apex Court in the case of ***Parbatbhai Ahir Vs. State of Gujarat reported in (2017) 9 SCC 641***, referring to various caases has summarized following principles to govern powers of High Court under Section 482 Cr.P.C.:-

“15 The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions :

(i) Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

(ii) The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

(iii) In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

(iv) While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

(v) The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and

no exhaustive elaboration of principles can be formulated;

(vi) In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;

(vii) As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

(viii) Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

(ix) In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and (x) There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”

29. In another judgment of the Apex Court in the case of **Ramveer Upadhyay and Another Vs. State of UP and another** reported in **2022 SCC online SC 484**, it has been held as under:-

39. In our considered opinion criminal proceedings cannot be nipped in the bud by exercise of jurisdiction under Section 482 of the Cr.P.C. only because the complaint has been lodged by a political rival. It is possible that a false complaint may have been lodged at the behest of a political opponent. However, such possibility would not

justify interference under Section 482 of the Cr.P.C. to quash the criminal proceedings. As observed above, the possibility of retaliation on the part of the petitioners by the acts alleged, after closure of the earlier criminal case cannot be ruled out. The allegations in the complaint constitute offence under the Atrocities Act. Whether the allegations are true or untrue, would have to be decided in the trial. 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 except in exceptionally rare cases where it is patently clear that the allegations are frivolous or do not disclose any offence. The Complaint Case No.19/2018 is not such a case which should be quashed at the inception itself without further Trial. The High Court rightly dismissed the application under Section 482 of the Cr.P.C.”

30. In view of the aforesaid, this Court finds that the submissions made by the learned counsel for the applicant call for adjudication on pure disputed questions of fact which may adequately be 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. The prayer for quashing the entire proceedings is refused as I do not see any abuse of the Court's process either.

31. In the present case, the name of the accused-applicant has come into light from the statement of the victim recorded under Section 164 Cr.P.C. While summoning the applicant, on the basis of the statement under Section 164 Cr.P.C., the Magistrate acted on the basis of an independent application filed by the de facto complainant and found that there was sufficient material before him showing complicity of the applicant in the aforesaid case although his name did not find place in the charge-sheet. Thus, for summoning persons upon taking cognizance of an offence, the Magistrate has to examine the materials available before him for coming to the conclusion that apart from those sent up by the police, some other persons are involved in the offence. These materials need not remain confined to the police

report, charge sheet or the F.I.R. The statement made under Section 164 of the Code could also be considered for such purpose as has been held by the Apex Court in the case of *Nahar Singh vs. The State of U.P. and Another* reported in (2022) 5 SCC 295.

32. This Court, however, may clarify that whatever is said in this judgment is purely tentative and limited to the purpose of judging the worth of the prayer to quash proceedings as well as impugned orders. It is and ought not be regarded by the Trial Court as any kind of a comment or evaluation about evidence, which is yet to surface during trial. The truth of the prosecution case has to be established beyond doubt at the trial in accordance with law. However, this Court is of opinion that this is not a case, where the prosecution ought to be scuttled at the threshold in the exercise of powers under Section 482 of the Code.

33. With the aforesaid observations, the present application under Section 482 Cr.P.C. is, accordingly, **dismissed**.

(Manju Rani Chauhan, J.)

Order Date :- 26.04.2020

Jitendra/-