Neutral Citation No. - 2023:AHC:176771
Reserved on 27.07.2023
Delivered on 12.09.2023

Court No. - 78

Case :- APPLICATION U/S 482 No. - 23900 of 2023
Applicant :- Abbas Ansari And 2 Others
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Upendra Upadhyay
Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh,J.

1. Heard Sri Upendra Upadhyay, learned counsel for the applicants and Sri Manish Goyal, learned Additional Advocate General for the State.

2. The present application under Section 482 Cr.P.C. has been filed for quashing of the entire proceedings of Criminal Case No. 11762 of 2022, (State Vs. Abbas Ansari & Ors.), arising out of Case Crime No. 106 of 2022, under Sections 171-H, 188, 341 IPC, Police Station Kotwali Mau, District Mau, pending in the court of Additional Chief Judicial Magistrate/Civil Judge (SD), Mau, as well as for quashing of charge-sheet dated 05.06.2022 and cognizance/summoning order dated 19.07.2022, passed in the aforesaid case.

3. Learned counsel for the applicants submits that no prima facie case is made out against the applicants/accused. It was stated that in view of the bar prescribed under Section 195 Cr.P.C., the prosecution of applicants for the offence under Section 188 IPC is permissible only on a complaint in writing made by the competent officer, whose order could have been violated by the accused. The prosecution for offence under Section 188 IPC cannot be initiated on a police report. It was submitted that cognizance for offence under Section 188 IPC against the applicants, is wholly against the law.

4. It was further submitted that so far the offence under Section 171-H IPC is concerned, there is absolutely no allegations so as to make out the ingredients of Section 171-H IPC and thus, no prima facie case under Section 171-H IPC is made out. Similarly in respect of offence under Section

341 IPC, it was submitted that merely a vague allegation has been made that while a procession of the victory of applicant No. 1 Abbas Ansari, who was elected MLA from Sadar legislative assembly, Mau, was being taken, the road was jammed and the public persons were facing difficulty in movement. There is no such specific allegation that any person was restrained from proceeding in any direction. There is absolutely no such allegation that any of the applicant-accused has voluntarily obstructed any person so as to prevent such person from proceeding in any direction. No statement of any such person has been recorded to show that he was voluntarily restrained by the accused persons in proceeding any direction. Referring to these facts, it was submitted that no prima facie case is made out against the applicants. The trial court did not consider the matter properly while taking cognizance and summoning the applicants for aforesaid offences. It was submitted that the impugned proceedings are nothing but are abuse of the process of court and thus, the impugned proceedings and summoning order are liable to be quashed. In support of his contentions, learned counsel has reliance upon the case of **Harvinder Singh @ Romi Sahni v. State of U.P. Thru. Addl. Chief Secy/Prin. Secy. Home Civil Sectt.** [Application u/s 482 Cr.P.C. No. 9190 of 2022], decided on 13.12.2022.

5. Learned Additional Advocate General appearing on behalf of the State has opposed the application and stated that so far the offence under Section 188 IPC is concerned, the cognizance for the same is permissible only on a complaint in writing by the competent officer, as prescribed under Section 195 Cr.P.C. and thus, the summoning of applicants for the offence under Section 188 IPC does not appear in accordance with law. So far the summoning and proceedings against the applicants under Sections 171-H and 341 IPC is concerned, a prima facie case is made out for the said offences. There are allegations in the FIR itself that due to procession being carried out by applicants along with others, the road was jammed and public persons were facing difficulty in proceeding further on the road. Further, whether the offence under Section 341 IPC is made out or not, that can be

decided by the trial court after taking evidence and at this stage matter cannot be examined meticulously. It was submitted that no case for quashing of proceedings for offences under Section 171-H IPC and 341 IPC is made out and thus, this application is liable to be dismissed. Learned AAG has placed reliance upon the case of **State of Madhya Pradesh v. Chunnilal Alias Chunni Singh**, 2009(12) SCC 649.

6. I have considered rival submissions and perused the record.

7. Before proceeding further, it would be apt to quote Section 195 Cr.P.C., which reads as under:-

> "195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.-(1) No Court shall take cognizance -
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> (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
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> (iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;
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> (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),
>
> 1 [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.]
>
> (2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy

> of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:
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> Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.
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> (3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.
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> (4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appellable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:
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> Provided that
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> (a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;
>
> (b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

8. Thus, in respect of offences punishable under Sections 172 to 188 IPC or abetment thereof, the Court can take cognizance only on a complaint in writing made the public servant concerned or some public servant to whom he administratively subordinate. The prohibitory orders are issued by the executive Magistrates. In this connection reference may be made to the case of Harvinder Singh (supra). In the instant matter, admittedly no such complaint of public servant concerned has been filed and the cognizance has been taken on the charge-sheet submitted by the police. The charge-sheet cannot be treated to be a complaint, as envisaged under section 195 CrPC.

9. In view thereof, taking cognizance for offence under Section 188 IPC by the learned Trial Court is hit by Section 195 Cr.P.C. and, therefore, the order taking cognizance for offence under Section 188 IPC against the applicants on a police report is not sustainable and the same is liable to be set aside.

10. So far the offence under Section 171-H IPC is concerned, it would be relevant to reproduce the provisions of section 171-H IPC, which reads as under:

> "[171H. Illegal payments in connection with an election.—Whoever without the general or special authority in writing of a 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:
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> 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."

11. From the aforesaid provisions, it is quite apparent that the said provision deals with mischief of illegal payment made in connection with an election. In the instant matter, there is absolutely no such allegation that any of the accused/applicant has incurred or authorized expenses on account of holding of any public meeting or upon any advertisement, circular or publication for the purpose of promoting or procuring the election of such candidate. In fact in the first information report itself, it was mentioned that the said procession was taken by the elected candidate of the Legislative Assembly. After perusing the record and statements of witnesses, examined during investigation, there is absolutely no such material so as to fulfil the ingredients of the offence as prescribed under Section 171-H IPC and thus, no prima facie case under Section 171-H IPC is made out.

12. Coming to the provisions of Section 341 IPC, it may be observed that this provision provides punishment to the person, who voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed. At this stage it would be pertinent to quote the provisions of section 339 and 341 of CrPC, which read as under:

> 339. Wrongful restraint.—Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.
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> "341. Punishment for wrongful restraint.—Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both."

13. It is apparent from the above-quoted provisions that for an offence punishable under Section 341 IPC, one of the ingredient is that there must be voluntarily obstruction to any person, so as to prevent that person from proceeding in any direction in which that person has a right to proceed. In the instant matter, only allegation made in the first information report is that due to the procession being taken by applicant No. 1 Abbas Ansari, who was elected as MLA from Sadar legislative assembly, Mau, the road was jammed and the public persons were facing difficulty in movement. There is absolutely no such allegation that any of the applicant-accused has voluntarily obstructed any person so as to prevent such person from proceeding in any direction. No statement of any such person has been recorded to show that he was voluntarily obstructed by any of applicant / accused from proceeding in any direction. All the witnesses, who are police officials, have merely alleged that due to the procession being taken by applicant No. 1 and his associates, the road has been jammed and public persons going on road were facing difficulty in movement. Such vague statement would not fulfil the ingredients of offence punishable under Section 341 IPC. The term voluntarily has been defined in section 39 of IPC, which states that a person is said to cause an effect "voluntarily" when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it. In the instant case, as noticed above, there is no statement of any person to the effect that he was obstructed by any of the accused/ applicant from proceeding in any direction. In fact the mischief attributed to the applicants/accused persons relates to violation of the proclamation made under Section 144 Cr.P.C., which is punishable under Section 188 IPC and in

that connection it has already been observed that for the offence under Section 188 IPC, the cognizance is hit by the bar of Section 195 Cr.P.C.

14. The legal position on the issue of quashing of criminal proceedings is well-settled that the jurisdiction to quash a complaint, FIR or a charge-sheet should be exercised sparingly and only in exceptional cases. However, where the allegations made in the FIR or the complaint and material on record even if 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, the charge-sheet may be quashed in exercise of inherent powers under Section 482 of the Cr.P.C. In well celebrated judgment reported in **AIR 1992 SC 605 State of Haryana and others Vs. Ch. Bhajan Lal,** Hon'ble Supreme Court has carved out certain guidelines, wherein FIR or proceedings may be quashed but cautioned that the power to quash FIR or proceedings should be exercised sparingly and that too in the rarest of rare cases. The Hon'ble Court 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.
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> (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 17 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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified 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 extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

15. In the case of **State of Madhya Pradesh v. Chunnilal** (supra), relied by learned AAG, the Hon'ble Apex Court has held that:

"The provisions in Section 9 of the Act, Rule 7 of the Rules and Section 4 of the Code when jointly read lead to an irresistible conclusion that the investigation to an offence under Section 3 of the Act by an officer not appointed in terms of Rule 7 is illegal and invalid. But when the offence complained are both under the IPC and any of the offence enumerated in Section 3 of the Act the investigation which is being made by a competent police officer in accordance with the provisions of the Code cannot be quashed for non investigation of the offence under Section 3 of the Act by a competent police officer. In such a situation the proceedings shall proceed in appropriate Court for the offences punishable under the IPC notwithstanding investigation and the charge sheet being not liable to be accepted only in respect of offence under Section 3 of the Act for taking cognizance of that offence."

16. In case of **Palanitkar v State of Bihar,** (2002) 1 SCC 24, the court held:

> "… whereas while exercising power under Section 482 CrPC the High Court has to look at the object and purpose for which such power is conferred on it under the said provision. Exercise of inherent power is available to the High Court to give effect to any order under CrPC, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. This being the position, exercise of power under Section 482 CrPC should be consistent with the scope and ambit of the same in the light of the decisions aforementioned. In appropriate cases, to prevent judicial process from being an instrument of oppression or harassment in the hands of frustrated or vindictive litigants, exercise of inherent power is not only desirable but necessary also, so that the judicial forum of court may not be allowed to be utilized for any oblique motive. When a person approaches the High Court under Section 482 CrPC to quash the very issue of process, the High Court on the facts and circumstances of a case has to exercise the powers with circumspection as stated above to really serve the purpose and object for which they are conferred."

17. In **State of Karnataka v M Devendrappa, (2002) 3 SCC 89**, it was held that exercise of power under Section 482 of the Code is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle 'quando lex

aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest' (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised 'ex debito justitiae' to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto. In Uma Shankar Gopalika v State of Bihar, (2005) 10 SCC it was reiterated that when the complaint fails to disclose any criminal offence, the proceeding is liable to be quashed under Section 482 of the Code:

18. Thus, it is clear that the inherent power in a matter of quashment of FIR or proceedings has to be exercised sparingly and with caution and when and only when such exercise is justified by the test specifically laid down in the provision itself. The power under Section 482 CrPC is very wide but it needs no special emphasis to state that conferment of wide power requires the Court to be more cautious. It casts an onerous and more diligent duty on the Court. But stated above, in exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it

amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto. Thus, when the complaint fails to disclose any criminal offence, the proceeding is liable to be quashed under Section 482 of the Code.

19. In the instant matter, considering the allegations made in the first information report and the material collected during investigation, no prima facie case under Sections 171-H, 341 IPC is made out. So far the offence under sections 188 IPC is concerned, as stated above, no complaint of public servant was filed in terms of section 195 CrPC and the charge-sheet submitted by the police cannot be treated to be a complaint and thus, the cognizance of the offence under section 188 IPC is hit by the bar of Section 195 Cr.P.C. Even if the prosecution case is accepted as such, no offence is made out and thus, no conviction of the applicants/accused is possible on such material. Thus, in view of aforesaid, the instant case falls within the categories carved out by the Hon'ble Apex Court for quashing of proceedings. Therefore, no useful purpose would be served by subjecting the applicants/ accused to trial.

20. In view of aforesaid, the impugned proceedings, including the charge sheet and cognizance order, of Criminal Case No. 11762 of 2022, (State Vs. Abbas Ansari & Ors.), arising out of Case Crime No. 106 of 2022, under Sections 171-H, 188, 341 IPC, Police Station Kotwali Mau, District Mau, are hereby quashed.

21. The application under Section 482 CrPC is **allowed**.

Order Date :- 12.09.2023
Anand