

[AFR]

[Neutral Citation No. - 2024:AHC-LKO:32822]

[Court No. 11]

[Reserved]

Case :- APPLICATION U/S 482 No. - 4806 of 2018

Applicant :- Mr. R. Shankar Raman Whole Time Director And Chief Financial Officer

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

Counsel for Applicant :- Rajendra Kumar Dwivedi, Devika Singh, Harish Pandey, Jitendra Kumar, Sima Gulati, Subhash Gulati

Counsel for Opposite Party :- Govt. Advocate, Manish Kumar Tripathi, Rajiv Kumar Srivastava

[With]

Case :- APPLICATION U/S 482 No. - 4649 of 2018

Applicant :- Mr. N. Dharmarajan Vice President Larsen And Toubro Ltd. Cons

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

Counsel for Applicant :- Rajendra Kumar Dwivedi, Devika Singh, Harish Pandey, Jitendra Kumar, Seema Gulati, Subhash Gulati

Counsel for Opposite Party :- Govt. Advocate, Manish Kumar Tripathi

[With]

Case :- APPLICATION U/S 482 No. - 4823 of 2018

Applicant :- Mr. S.N. Subramanyan Sarma C.E.O. And M.D. Larsen And Toubro Lt

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

Counsel for Applicant :- Rajendra Kumar Dwivedi, Devika Singh, Harish Pandey, Sima Gulati, Subhash Gulati

Counsel for Opposite Party :- Govt. Advocate, Manish Kumar Tripathi, Rajiv Kumar Srivastava

[With]

Case :- APPLICATION U/S 482 No. - 4902 of 2018

Applicant :- Mr. M.V. Satish Whole Time Director And Senior Executive V.C.

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

Counsel for Applicant :- Rajendra Kumar Dwivedi, Devika Singh, Harish Pandey, Sima Gulati, Subhash Gulati, Suyash Bajpai

Counsel for Opposite Party :- Govt. Advocate, Manish Kumar Tripathi

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Sri Dileep Kumar, learned Senior Advocate assisted by Sri Raghuvansh Mishra, Sri Subhash Gulati & Sri Rajendra Kumar Dwivedi assisted by Ms. Sagun Chandra Rastogi, learned counsel for the Petitioners and Sri Aditya Vikram Singh holding brief of Sri Manish Kumar Tripathi, learned counsel for the private opposite party as well as Ms. Nusrat Jahan, learned Additional Government Advocate for the State.
2. Since the subject matter is same in all the aforesaid four petitions filed under Section 482 Cr.P.C. and with consent of learned counsel for the parties, all the aforesaid petitions are clubbed together and are being decided by a common order.
3. By means of the aforesaid four petitions, filed under Section 482 Cr.P.C., the petitioners have prayed the following common reliefs:

“WHEREFORE, it is most respectfully prayed that this Hon'ble Court may very graciously be pleased to quash the Complaint Case No.1998 of 2017 under section 323, 504, 506, 406, 420 of Indian Penal Code relating to Police Station Qaiserbagh, District- Lucknow in the name and style of “Sankalp Mishra Vs Mr. Subramanyam and Others” pending in the court of First Additional Chief Judicial Magistrate (Court No.25), Lucknow as well as the summoning order dated 16-5-2018 passed by Sri Ritesh Sachdeva, the Learned Additional Chief Judicial Magistrate, Lucknow.

It is further prayed that the order dated 12.07.2018 passed by the 1st Addl District Judge passed in Criminal Revision No: 422 of 2018 may also be quashed.

It is further prayed that The Hon'ble Court may further be pleased to pass any other order or direction which it may deem fit, proper and just under the facts and circumstances of the case."

4. Learned Counsel for the Petitioners has submitted that in the aforesaid petitions, the Petitioner, namely, Mr. R. Shankar Raman is the Whole Time Director and Chief Financial Officer of M/s Larsen and Toubro Limited (hereinafter referred to as 'L & T'); Mr. M.N. Dharmarajan is vice president and Head of L & T; Mr. S.N. Subramanyan Sarma is Chief Executive Officer and Managing Director of L & T and Mr. M.V. Satish is Whole Time Director and Senior Executive Vice President of L & T. The Petitioners' office is situated at Chennai and they have never visited Lucknow on the alleged date of incident or otherwise. The role of the Petitioners are to exercise their authority at a policy-making level and the day-to-day basis of conducting every project of the Company.
5. Learned Counsel for the Petitioners has further stated that the complaint filed by the Complainant/Opposite Party No. 2 is based upon the false, concocted and imaginary allegations and the entire version set up in the complaint of the Complainant/Opposite Party No. 2 is full of inherent falsity, discrepancies, self-contradictory allegations and on highly discrepant versions of the Complainant/Opposite Party No. 2 at different stages and in different depositions or narrations made by him i.e. in the statement of the complainant under Section 200 Cr.P.C., affidavit, the complaint made to SSP dated 07.09.2017 and the pre-summoning evidence recorded in the court on 13.09.2017 do not, prima facie, make out any criminal case whatsoever. Learned counsel for the petitioners has further submitted that the learned Magistrate did not apply his judicial mind

to such glaring discrepancies and contradictions and was pleased to mechanically summon the Petitioners for the offences under Sections 323, 504, 506, 406, 420 IPC.

6. The Learned Counsel for the Petitioners has further submitted that the alleged core incident is that three cheques were given to the Company on three different dates, i.e. on 29.08.2017 of Rs.5,00,000/-(Cheque no. 011492), on 05.09.2017 of Rs. 4,00,000/- (Cheque no. 011493), on 29.09.2017 of Rs. 49,00,000/- (Cheque no. 011494) respectively, aggregating to the tune of Rs.58,00,000 and later on one blank cheque was given to the Company by the complainant/opposite Party No. 2, which, as alleged by opposite party No.2, was taken from him on the pretext of “confidential responsibilities”.
7. Learned Counsel for the Petitioners has submitted that the above-mentioned cheques in question were simply the kickbacks and losses caused to the company which were compensated by the Complainant/Opposite Party No. 2 which has been affirmed by him in his statement recorded under Section 200 Cr.P.C.
8. The attention of this court was drawn towards the fact that, admittedly, the petitioners were neither posted nor present in Lucknow on the alleged date of the incident when the complainant/opposite Party No. 2 was allegedly beaten and threatened by two unknown persons, who also took names of the other accused persons, absent at the place of occurrence who had sent the said assailants.
9. Learned counsel for the petitioners has also stated that the complainant, on the basis of false and fabricated averments, has filed the impugned complaint before the learned trial court. In the said matter, the learned court of First Additional Chief Judicial Magistrate

(Court No.25), Lucknow was pleased to record the statement of the complainant under section 200 Cr.P.C. and the statement of his brother as a witness under section 202 Cr.P.C. as well as perused the documents submitted by him as evidence under section 202 Cr.P.C. Bare perusal of the aforesaid statements recorded under Sections 200 and 202 Cr.P.C. makes it clear that no offence under Sections 406, 420, 504, 506 of the IPC is made out due to absence of necessary ingredients of section 406/420 Indian Penal Code, 1860 or other alleged offences u/s 323/504/506 Indian Penal Code, 1860 qua the Petitioners.

10. Attention of this Court was drawn towards the legal impediment in the matter inasmuch as the provisions of section 202(1) Criminal Procedure Code, 1973, which is mandatory in nature, have not been complied with while rendering the summoning order *void-ab-initio*. The Learned Magistrate had issued summons without meeting the requirement of Section 202 Cr.P.C., even though the petitioners were residing outside the territorial jurisdiction of the trial court.
11. Learned counsel for petitioner further submitted that the provisions of Section 202 Cr.P.C. were amended vide Amendment Act, 2005, making it mandatory to postpone the issue of process where the accused resides in an area beyond the territorial jurisdiction of the Magistrate concerned. The same was found necessary in order to protect innocent persons from being harassed by unscrupulous persons and making it obligatory upon the Magistrate to enquire into the case himself, or to direct investigation, to be made by a police officer, or by such other person as he thinks fit for the purpose of finding out whether or not, there was sufficient ground for proceeding against the accused persons before issuing summons in such cases.
12. Learned Additional Government Advocate has also drawn attention of this Court towards Para no.4 of the judgment of the Hon'ble Supreme

Court dated: 22.08.2023 in re: **Odi Jerang vs Nabajyoti Baruah [SLP (Cri.) No. 2135/2022]** which is reproduced herein as under:

“4. There cannot be any doubt that in view of the use of word "shall" in sub-section 1 of Section 202 of the CRPC and the object of amendment made by the Act No. 25 of 2005, the provision will have to be held as mandatory in a case where the accused is residing at a place outside the jurisdiction of the learned Magistrate. In fact, in paragraph No.12 of the aforesaid decision relied upon by the learned counsel appearing for the Petitioner, this Court held that in a case where one of the accused is a resident of a place outside the jurisdiction of the learned Magistrate, following the procedure under sub-section 1 of Section 202 of the CRPC is mandatory. In the case of Vijay Dhanuka (2014) 14 SCC 638, this Court found that before issuing summons, the learned Magistrate had examined the Complainant and two other witnesses on oath and therefore, on facts, this Court found that a substantial compliance with sub-section 1 of Section 202 of the CRPC was made.”

13. Learned Counsel for the Petitioners has stated that it is an admitted position that the petitioners of the aforesaid petitions and the other accused, arrayed as accused nos. 1, 3 and 4 were not present in Lucknow at the alleged time and date of the occurrence, as averred in the complaint. It is further stated that the impugned order is a non-speaking order and does not enumerate any reason for taking cognizance of the offence against the petitioners. The summoning order itself does not show that for which offences the learned Magistrate has taken cognizance against the petitioners.
14. Learned Counsel for the petitioners has further contended that the complainant/opposite party no. 2 concealed the fact that he had written by hand as many as six documents clearly admitting his involvement in various illegal activities. It is pertinent to mention here that the complainant/opposite party no. 2 has alleged in his complaint that he was forced to put his signatures on the blank papers. As a matter of fact, the complainant/opposite party no. 2 himself has

admitted of having committed such offences and illegally benefitted himself to the tune of Rs.58,00,000. He also did not take any step to get the payments of the stopped cheques for several days. Subsequently, the complainant/opposite party No. 2 had even attended a Management Interaction Session with the officials of the Company after obtaining the alleged forceful signatures in the blank paper from the complainant/opposite party no. 2 by the officials of the company, which again renders the version set up in the complaint false and unworthy of any credence.

15. Attention of this Court was drawn towards the voluntary resignation sent by the complainant/opposite Party No. 2 through e-mail on 01.09.2017 wherein he has made no complaint regarding obtaining the signatures under duress etc., rather, has praised the Company while expressing his gratitude to the company which is evident in the said resignation sent through e-mail.
16. Submission of learned counsel for the petitioners is that the case in hand is squarely covered by the postulates of sub para nos. 1, 3, 7 of para 102 of the judgment rendered in re; **State of Haryana and Others Vs Bhajan Lal and Others** reported in [1992 Supp (1) SCC 335] which read 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 category 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 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.

(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.

(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.”

17. The Hon'ble Apex Court has held that in such type of cases where the complainant/opposite party no. 2, for the sole purpose of seeking vengeance, produces false yet unbelievable as well as drafted complaints, the court owes a duty to look into many other attending circumstances emerging from the records of the case to get the truth. In the case of **Haji Iqbal alias Bala through S.P.O.A Vs. State of UP & Others (2023) SCC OnLine SC 948**, the Apex Court in para 14 has held as under:

“14. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the Complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The Complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the

averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

18. On the other hand, learned counsel for opposite party no. 2 has submitted that the complaint case bearing number 1998 of 2017 filed by the complainant/opposite party no.2, pending before the Court of Additional Chief Judicial Magistrate-I is bona-fide complaint as the petitioners have committed serious offence.
19. He has further submitted that the complainant/opposite party no. 2 was made a scapegoat and that he was asked to give those 3 cheques. He was called for some meeting on the pretext of some work/project in Varanasi and then asked to give those cheques.
20. Learned counsel for opposite party no. 2 has also contended that the deponent in the petition is not the petitioner himself and the deponent in the rejoinder is again a different person which is inconsistent with the procedure of criminal law. He has placed reliance on the judgement in re; **T.C. Mathai and another v. District & Sessions Judge, Thiruvananthapuram Kerala, (1999) 3 SCC 614** for the same. However, upon perusing the same, this Court realized that the aforementioned case is about appearance only and is irrelevant in the present case.

21. Heard learned counsel for the parties, perused the material available on record and the judgments referred: **Pepsi Foods Ltd. and another v. Special Judicial Magistrate and others, (1998) 5 SCC 749, Vijay Dhanuka and others Versus Najima Mamtaj and others** Reported in **(2014)14 SCC 638, Abhijit Pawar v. Hemant Madhukar Nimbalkar and another, (2017) 3 SCC 528: (2017) 2 SCC (Cri) 192: 2016 SCC OnLine SC 1533**. The powers of the High Court to quash the criminal proceedings in exercise of its extraordinary jurisdiction under Section 482 Cr.P.C. is well known but the High Court may not enter into determination of the disputed questions of fact at the stage of its exercise of powers under section 482 Cr.P.C. However, the Court may examine and take note of the facts and the allegations in order to find out whether the impugned proceedings are in abuse of the process of the court and law and their continuance would result in miscarriage of justice or not.
22. The Hon'ble Supreme Court in the case of **Pepsi Foods Ltd (Supra)** has held that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set in motion as the matter of course for alleged offences and was pleased to observe in Para 28 of the aforesaid judgment which reads as under:

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the Complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the Complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions

to the Complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

- 23.** Further, in this case, the substantial compliance of section 202(1), Cr.P.C. has not been done by the learned Magistrate which would result in failure of justice. As a matter of fact, the complainant/opposite party no. 2 has not made correct deposition before the learned trial court.
- 24.** In order to appreciate the contentions of the parties, it is necessary for this Court to cull out Section 202 of the Code of Criminal Procedure which reads as under:

"202. Postponement of issue of process: -

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made: -

a. where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

b. where the complaint has not been made by a Court, unless the Complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the Complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code

on an officer in charge of a police station except the power to arrest without warrant.”

25. The Apex Court in Para 23 in re; **Abhijit Pawar (supra)** has observed that admitted position in law is that in those cases where the accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, it is mandatory on the part of the Magistrate to conduct an inquiry or investigation before issuing the process. Section 202 Cr.P.C. was amended in the year 2005 by the Code of Criminal Procedure (Amendment) Act, 2005, with effect from 22.06.2006 by adding the words “and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction”. There is a vital purpose or objective behind this amendment, namely, to avoid false complaints against such persons residing at a far-off place in order to save them from unnecessary harassment. Thus, the amended provision casts an obligation on the Magistrate to conduct enquiry or direct investigation before issuing the process, so that false complaints are filtered and rejected. The aforesaid purpose is specifically mentioned in the note appended to the Bill proposing the said amendment.
26. The Hon’ble Apex Court in re; **Vijay Dhanuka (Supra)** had discussed the mandatory requirements of Section 202 of Cr.P.C. and had been pleased to hold that the same is mandatory in nature. The essence and purpose of this amendment has been captured by the aforementioned judgment in Para 11 and 12 in the following words:

“11. Section 202 of the Code, inter alia, contemplates postponement of the issue of the process ‘in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction’ and thereafter to either inquire into the case by himself or direct an investigation to be made by a police officer or by such other person as he thinks fit. In the face of it, what needs our determination is as to whether in a case where the accused is residing at a place beyond

the area in which the Magistrate exercises his jurisdiction, inquiry is mandatory or not.

12. The words 'and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction' were inserted by Section 19 of the Code of Criminal Procedure (Amendment) Act (Central Act 25 of 2005) w.e.f. 23-6-2006. The aforesaid amendment, in the opinion of the legislature, was essential as false complaints are filed against persons residing at far-off places in order to harass them. The note for the amendment reads as follows:

'False complaints are filed against persons residing at far-off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of Section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction, he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused.'

The use of the expression "shall" prima facie makes the inquiry or the investigation, as the case may be, by the Magistrate mandatory. The word "shall" is ordinarily mandatory but sometimes, taking into account the context or the intention, it can be held to be directory. The use of the word "shall" in all circumstances is not decisive. Bearing in mind the aforesaid principle, when we look to the intention of the legislature, we find that it is aimed to prevent innocent persons from harassment by unscrupulous persons from false complaints. Hence, in our opinion, the use of the expression "shall" and the background and the purpose for which the amendment has been brought, we have no doubt in our mind that inquiry or the investigation, as the case may be, is mandatory before summons are issued against the accused living beyond the territorial jurisdiction of the Magistrate."

- 27.** The Learned Magistrate failed to conduct even a basic preliminary inquiry in order to ascertain the roles and duties of the individuals before mechanically summoning all the persons arrayed as accused in the complaint filed by opposite party no. 2 including the petitioners herein.

- 28.** In view of the submissions advanced by learned counsel for the parties as well as the judgments cited, the Complaint Case bearing no.1998 of 2017, under Sections 323, 504, 506, 406, 420 IPC, Police Station Qaiserbagh, District Lucknow, titled “Sankalp Mishra Vs. Mr. Subramanyam and Others”, pending before the learned Additional Chief Judicial Magistrate-I, court no. 25, Lucknow and summoning order dated 16.05.2018 passed by learned Additional Chief Judicial Magistrate, Lucknow as well as order dated 12.07.2018 passed by the 1st Addl District Judge passed in Criminal Revision no. 422 of 2018 are hereby **quashed**.
- 29.** Accordingly, all the aforesaid petitions filed under section 482, CrPC are hereby **allowed**.
- 30.** No order as to Costs.

[Before parting with, I appreciate the efforts and research work done by Sri Piyush Tripathi, Research Associate attached with me, in finding out the relevant case laws applicable in the present case.]

[Rajesh Singh Chauhan,J.]

Order Date :- 26/04/2024

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