

Neutral Citation No. - 2023:AHC:175010

AFR

Reserved on 10.08.2023

Delivered on 29.08.2023

Court No. - 70

Case :- APPLICATION U/S 482 No. - 19546 of 2019

Applicant :- Prashant Saxena

Opposite Party :- State Of U.P. And Anr

Counsel for Applicant :- Awadhesh Kumar Saxena, Avijit Saxena

Counsel for Opposite Party :- G.A., Rajendra Kumar Dubey, Santosh Kumar Pandey

Hon'ble Sameer Jain, J.

1. The instant application under Section 482 Cr.P.C. is connected with Criminal Misc.Bail Application No. 19065 of 2023 vide order dated 22.5.2023 passed by this Court in the above noted Criminal Misc. Bail Application.

2. From the order dated 22.5.2023 passed in Criminal Misc.Bail Application No. 19065 of 2023 it reflects that this Court directed the office to place the above noted Criminal Misc.Bail Application along with the instant application before Hon'ble the Chief Justice for nomination so as both the matters may be heard together.

3. In view of the orders dated 22.5.2023 and 26.7.2023 passed by this Court in Criminal Misc.Bail Application No.19065 of 2023 both the matters including the instant application were placed before Hon'ble the Chief Justice for nomination and vide order dated 2.8.2023 both the matters were nominated to this Bench and, therefore, the instant application and Criminal Misc.Bail Application No. 19065 of 2023 were heard together and separate order has been passed in Criminal Misc.Bail Application No. 19065 of 2023.

4. Heard Sri Kamal Krishna, learned Senior Advocate, assisted by Sri Awadhesh Kumar Saxena, learned counsel for the applicant, Sri Santosh Kumar Pandey, learned counsel for the informant and Dr.S.B.Maurya learned AGA-I, for the State.

5. The instant application under Section 482 Cr.P.C. has been filed with the prayer to quash the entire proceedings pursuant to the charge sheet No 138 of 2019 dated 17.4.2019 as well as cognizance order dated 25.4.2019 passed by Chief Judicial Magistrate, Farrukhabad arising out of Case Crime No. 0597 of 2018, under Sections 376 and 506 IPC, Police Station Fatehgarh Kotwali, District Fatehgarh.

6. From the record it reflects that pleadings have been exchanged, therefore, instant application is being finally disposed of.

FACTUAL MATRIX:

8. On 24.7.2018 opposite party no.2 lodged FIR of the present case against the applicant, who is her 'Dever' (brother-in-law) under Sections 376 and 506 IPC. According to the FIR, the husband of opposite party no.2 expired on 29.7.2017 and after his death applicant, i.e., brother of her husband tried to develop physical relationship with her and due to the conduct of applicant and his parents, opposite party no.2 returned to her paternal home on 8.7.2018 and on 9.7.2018 at about 4.00 AM in the morning applicant arrived at her paternal home and proposed her and thereafter he induced her to smell some substance and thereafter committed rape with her and when informant gained consciousness then found that after committing rape with her, applicant was sleeping on the same bed and when informant (opposite party no.2) made complaint to him then applicant stated, he has prepared the clip of rape and if you made complaint then he will post the same on social media. It is further mentioned in the FIR that although applicant went next day but on the basis of video clip he again committed rape with her. It is further mentioned in the FIR that applicant committed rape with the informant, i.e., her 'Bhabhi' under the false promise of marriage and refused to perform marriage with her.

9. After registration of the case investigation was started and during investigation Investigating Officer recorded the statement of the

prosecutrix, i.e., informant (opposite party no.2) under Section 161 Cr.P.C. in which she reiterated the version of the FIR and after that statement of the informant (opposite party no.2) was recorded by the Magistrate under Section 164 Cr.P.C. The prosecutrix in her statement recorded under Section 164 Cr.P.C. also reiterated the version of the FIR. From the record it further reflects that during investigation Investigating Officer also recorded the second statement of the informant (opposite party no.2) under Section 161 Cr.P.C. and made a query that as per allegation applicant also prepared videographs of the prosecutrix and what was the mobile number. On query, prosecutrix replied to the Investigating Officer that applicant although prepared the videographs of rape but now he has deleted the same. Therefore, it appears that during investigation no alleged videograph of the alleged incident of rape was recovered.

10. After investigation, on the basis of the statement of the informant (opposite party no.2) charge sheet was filed against the applicant on 17.4.2019 and the court concerned took cognizance on 25.4.2019 and thereafter summons were issued to the applicant.

11. Hence, the present application.

SUBMISSIONS ADVANCED ON BEHALF OF THE APPLICANT:

12. Learned counsel for the applicant submits that applicant is brother-in-law (Dever) of the informant (opposite party no.2) and totally on the basis of false and frivolous allegation of rape he has been made accused in the present matter.

13. He further submits that alleged rape is said to have been committed by the applicant on 9.7.2018 but FIR was lodged on 24.7.2018, i.e, after more than two weeks and this fact itself shows that totally on the basis of false allegation of rape applicant has been roped in the present matter.

14. He further submits that as per the prosecutrix, i.e., informant of the case, applicant committed rape with her in her paternal home which appears to be improbable and this fact further shows that a false story of rape has been cooked up by the informant, i.e., 'Bhabhi' of the applicant.

15. He further submits that even from the entire story narrated by the informant (opposite party no.2) it appears that it is based on false and concocted facts and no reliance can be placed on such hypothetical version.

16. He further submits that as per the prosecutrix, applicant induced her to smell some substance and thereafter she lost her consciousness and applicant committed rape with her and this fact itself shows that entire story is false as no reliance can be placed on such hypothetical version, therefore, story of rape narrated by the informant cannot be believed.

17. He further submits that although from the FIR and both the statements of the informant (opposite party no.2) recorded under Sections 161 and 164 Cr.P.C. it appears that there is allegation of rape against the applicant but this Court should read in between the lines while considering the prayer for quashing the charge sheet or the proceedings along with attending circumstances.

18. He further submits that if proceeding pending against the applicant manifestly appears to be vexatious and frivolous then it is the duty of this Court to quash the same.

19. He placed reliance upon the judgment of the Apex Court in the case of **Mahmood Ali and others Vs. State of U.P. and others** passed in Criminal Appeal No.2341 of 2023 dated 8.8.2023 [2023 INSC (684)].

20. He further submits that actually after the death of her husband informant, i.e., Bhabhi of the applicant wanted to grab the entire property of the applicant and his parents and in this regard the mother of applicant, i.e., mother-in-law of the prosecutrix moved applications against her to the police on 11.12.2017 and on 9.3.2018, i.e., well before lodgement of

the FIR of the present case which has been annexed along with the instant application and only due to this reason with ulterior motive informant implicated the applicant in the present case.

21. He further submits that informant of the case also filed cases under Sections 498A, 354 and 323 IPC and Section 3/4 Dowry Prohibition Act and under the provisions of Domestic Violence Act against the applicant and his parents even before the FIR of the present case and therefore it appears that informant was highly inimical with the applicant and his parents and she lodged the FIR of the present case only with ulterior motive and, therefore, in view of the law laid down by the Apex Court in the case **Mahmood Ali (Surpra)** the impugned proceeding pending against the applicant is liable to be quashed.

22. He further submits that although there is allegation that applicant also prepared the video of the incident of rape but in her second statement recorded under Section 161 Cr.P.C. prosecutrix, i.e., informant of the case herself stated that the alleged video has been deleted by the applicant and this fact again shows that applicant neither committed any rape with her nor he ever prepared any video and, therefore, from this angle too story narrated by informant appears to be totally false.

23. He further submits that as the impugned proceeding pending against the applicant appears to be maliciously instituted with an ulterior motive with an intention to harass the applicant and to grab his property, therefore, it is liable to be quashed.

**SUBMISSIONS ADVANCED BY OPPOSITE PARTY NO.2
AND THE STATE:**

24. Per contra, learned AGA as well as learned counsel for the informant (opposite party no.2) opposed the prayer for quashing the proceeding and the charge sheet and submitted that there are allegations of rape against the applicant in the FIR and in both the statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. and law is

settled that at this stage if prima facie case against the applicant is made out then this Court should not quash the proceedings pending against him.

25. Both the learned counsels further submit that from the perusal of the FIR and other available materials on record prima facie offence of rape is clearly made out against the applicant.

26. Learned counsel for the informant (opposite party no.2) further submitted that applicant is brother-in-law (Dever) of the informant and he mis-used his position after the death of his elder brother, i.e., husband of the informant and firstly he harassed her and due to his harassment informant had to start living in her paternal home and thereafter he committed rape with her in her paternal home.

27. He further submits that although FIR of the present case was lodged after two weeks but merely on the basis of delay in lodging the FIR criminal proceedings pending against an accused should not be quashed if otherwise it discloses prima offence against him. He next submits that in the case of rape especially where accused is close relative of the victim delay in lodging the FIR is quite obvious.

28. He next submits that although during investigation alleged video of rape could not be recovered as it had already been deleted by the applicant but merely due to this reason proceeding pending against the applicant should not be quashed as informant, i.e., opposite party no.2 in the FIR as well as in her the statements recorded during investigation categorically stated that applicant committed rape with her and at this stage there is no reason to discard her version.

29. Learned counsel for the informant and the learned AGA further submitted that whether allegation of rape is correct or not, it can only be adjudicated by the trial court during trial and this Court at this stage can only see whether prima facie offence of rape is made out or not and in the present matter as prima facie offence of rape is clearly made out against the applicant, therefore proceeding pending against the applicant should

not be quashed and, therefore, instant applicant is devoid of merit and is liable to be dismissed.

ANALYSIS:

30. I have given my anxious consideration on the rival submissions advanced by learned counsel for both the parties and perused the material available on record.

31. The power of this Court with regard to its inherent jurisdiction has been discussed by Three Judges Bench of the Apex Court in case of **R.P. Kapur Vs. State of Punjab AIR 1960 SC 866** and Three Judges Bench of the Apex Court summarised the categories of cases where inherent power can or should be exercised to quash the proceedings:-

(i) Where it manifestly appears that there is a legal bar against the institution or continuance of proceedings for example want of sanction,

(ii) Where allegation in the first information report or complaint if taken at its face value and accepted in their entirety do not constitute the offence alleged,

(iii) Where the allegations constituted an offence but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charges.

32. The Apex Court in its celebrated judgement of **State of Haryana and others Vs. Bhajan Lal and other 1992 Supp (1) SCC 335** considered in detail the scope of this Court under Section 482 Cr.P.C. and/ or Article 226 of Constitution of India and identified the following categories in which proceedings can be quashed and observed in paragraph 102 as:-

"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."

33. The Three Judges Bench of the Supreme Court in the case of **M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others AIR (2021) SC 1918** also occasioned to discuss the scope of

Section 482 Cr.P.C. and Article 226 of Constitution of India and observed that if a case falls under the parameters of **R.P. Kapur case (supra)** and **Bhajan Lal case (supra)** then this Court is having jurisdiction to quash the proceedings by invoking its jurisdiction under Section 482 Cr.P.C.

34. The Three Judges Bench of the Apex Court in case of **Prabhatbhai Aahir alias Parbatbai Bhimsinhhbai Karmur and others Vs. State of Gujarat and another (2017) 9 SCC 641** observed that Section 482 Cr.P.C. is pre-faced with an overriding provision and this Court being a superior Court has the inherent power to make such order as necessary (i) to prevent an abuse of the process of any Court; or (ii) otherwise to secure the ends of justice.

35. Again apex Court in case of **Kapil Agarwal and others Vs. Sanjay Sharma and others (2021) 5 SCC 524** observed with regard to power of this Court under Section 482 Cr.P.C. as:-

"As observed and held by this Court in catena of decisions, inherent jurisdiction under Section 482 Cr.P.C. and/or under Article 226 of the Constitution is designed to achieve salutary purpose that criminal proceedings ought not to be permitted to degenerate into weapon of harassment. When the Court is satisfied that criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon accused, in exercise of inherent powers, such proceedings can be quashed."

36. Recently, the Apex Court in the case of **Mahmood Ali (supra)** on which reliance was also placed by the learned counsel for the applicant observed in paragraph-12 as under:

"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.***

37. Therefore, the law with regard to the power of this Court under Section 482 Cr.P.C. is settled that this Court cannot scuttle a legitimate prosecution at its inception and the inherent power should be used sparingly with abundant caution but at the same time if it appears that even if entire allegations are accepted and even then no offence is made out or proceedings has been initiated with mala-fide intention only to harass the accused persons then in the interest of justice and to secure the ends of justice this Court should invoke its jurisdiction under Section 482 Cr.P.C. and should quash the proceedings.

38. Following the well settled principle of law and contents of the allegation would have to be taken as a whole to deduce as to whether the ingredients of the offences have been duly established. If ingredients of the offences have been duly established then next question arises whether in spite that in view of the law laid down by the Apex Court proceeding or charge-sheet pending against the applicant can be quashed or not.

39. In case at hand, from the perusal of the material available on record, it appears that there is allegation of rape against the applicant, who is 'dever' of the informant and victim (informant) i.e. prosecutrix of the case in the FIR as well as in her both the statements recorded under Sections 161 Cr.P.C. and 164 Cr.P.C. made allegation of rape against the applicant,

but as observed by the Apex Court in the case of **Mahmood Ali (supra)** it is not just enough for the Court to look into the averment made in the FIR/ complaint alone for the purpose of ascertaining whether the necessary ingredients constitute the alleged offence are disclosed or not. In frivolous or vexatious or proceedings instituted with the ulterior motive for wreaking vengeance, this Court owes a duty to look into the FIR and record of the case over and above the averments.

40. In case at hand, applicant is brother-in-law (Devar) of the informant i.e. opposite party no.2 and earlier also opposite party no.2 lodged two cases against him and his parents including the case under Section 498A , 354 IPC and case under the provisions of Domestic Violence Act, therefore, attending circumstances indicate that opposite party no.2 instituted the impugned proceedings against the applicant for wreaking vengeance due to personal grudge as alleged by applicant. Further, on analysing the facts of the case it appears that very casually opposite party no.2 made allegation of rape against the applicant, which prima facie appears to be unconvincing, therefore, this Court is of the view that allegation of rape was made with ulterior motive only to harass the applicant, therefore, the present case falls under the parameter 7 of **Bhajan Lal case (supra)**. Thus, in view of the law laid down by the Apex Court in Bhajan Lal (supra) and Mahmood Ali (supra) the proceeding pending against the applicant is liable to be quashed.

41. Further, in case of **Bhajan Lal (supra)** the Apex Court in paragraph 102 (5) observed that where the allegations made in the FIR or the complaint are so absurd and inherently improbable then this Court would be justified to quash the proceeding.

42. In case at hand, prosecutrix stated that applicant came at her paternal home and committed rape with her and before committing rape he induced her to smell some substance, thereafter she lost her consciousness. The story narrated by the informant appears to be absurd and no reliance can be placed on such version. Thus in view of law laid

down by the Apex Court in case of **Bhajan Lal (supra)** the proceeding pending against the applicant from this angle also is liable to be quashed.

43. It is also pertinent to mention here that as per informant, applicant also prepared video clip of the alleged rape and threatened her to post it but the alleged video clip could not be recovered and during investigation on query made by Investigating Officer informant in her second statement recorded under Section 161 Cr.P.C. stated that applicant already deleted it. This fact again shows that entire story narrated by victim i.e. opposite party no.2 is totally false and baseless.

44. Therefore, from the discussion made above, it appears that from the face of it the allegations made against the applicant appears to be false, concocted and fabricated one and no prima facie offence of rape and threatening against the applicant is made out.

45. The law is settled that the judicial process should not be instrumental or oppressive for needless harassment and if this Court finds that proceeding pending against the accused is abuse of the process of law and it has been instituted with mala fide intention or ulterior motive with a view for wrecking vengeance then this Court should exercise the power under Section 482 Cr.P.C. and should quash the proceedings pending against the accused to prevent an abuse of the process of Court and to secure the ends of justice.

46. Therefore, from ongoing discussion, the instant application succeeds and is hereby allowed. The impugned proceedings pending against applicant as well as charge-sheet dated 17.4.2019 filed against the applicant are hereby quashed.

Order Date :- 29.08.2023

SKM/AKPandey