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A.F.R.

Court No. - 13

Case :- APPLICATION U/S 482 No. - 640 of 2016
Applicant :- Anil Katiyar And Another
Opposite Party :- State Of Uttar Pradesh Thru. Cis1 Cbcid Lucknow
Counsel for Applicant :- Nandit Kumar Srivastava,Pranjal Krishna,Tapeshwar Kumar Maurya
Counsel for Opposite Party :- Govt. Advocate

Hon'ble Shamim Ahmed,J.

1. Heard Sri Pranjal Krishna, Advocate assisted by Sri Saurabh Shukla, learned counsel for the applicants and Sri Ajay Kumar Agnihotri, learned A.G.A. alongwith Sri Ashok Kumar Singh, learned A.G.A.-I for the State.

2. The present application under Section 482 Cr.P.C. has been filed with a prayer to quash the entire proceedings of Criminal Case No.319 of 2015 (State Vs. Awadhu Ram & Others), under Sections 13(1)(d) and 13(2) of The Prevention of Corruption Act, 1988 arising out of Crime No.102/2014, Police Station Husainganj, District Lucknow, investigated by CIS(1) CB CID, Lucknow pending in the Court of learned Special Judge (P.C. Act), Lucknow as well as to quash the cognizance/summoning order dated 08.09.2015.

3. Learned counsel for the applicants has filed a supplementary affidavit on 17.05.2024 in the Court, which was taken on record.

4. Learned counsel for the applicants submitted that the present matter pertains to the appointment of Junior Clerks in the Office of the Engineer-in-Chief and Circle cadre of the Irrigation Department in the year 2008. The applicants were merely members of the Selection Committee constituted for this purpose.

5. Learned counsel for the applicants further submitted that the selection procedure comprised two stages: a typing test and an interview. The applicants had no role in conducting or evaluating the typing test, which was

conducted by experts from the Directorate of Technical Education and Employment and Training Department, Lucknow.

6. Learned counsel for the applicants further submitted that the interview was conducted as per the Uttar Pradesh Procedure for Direct Recruitment for Group 'C' Post Rules, 2003. The applicants had no role in evaluating the educational and sports qualifications of the candidates, which was done by a Sub-Committee.

7. Learned counsel for the applicants further submitted that the final results were compiled based on the typing test results provided by the experts and the interview conducted by the Selection Committee. The applicants performed their duties in accordance with the rules and have not committed any wrong.

8. Learned counsel for the applicants further submitted that two inquiries were conducted by Mr. Radha Charan and Mr. A.N. Gupta in 2011 and 2012 respectively and they did not assign any specific role or criminal conspiracy to the applicants. Copies of the Enquiry Reports dated 14.11.2011 and 11.10.2012 are annexed as Annexures No. 11 and 14 respectively alongwith the affidavit filed in support of the present application under Section 482 Cr.P.C.

9. Learned counsel for the applicants further submitted that the applicants herein are law-abiding senior citizens, retired from the Irrigation Department, Government of Uttar Pradesh, with unblemished service records. The Applicant No. 1 retired as Chief Engineer on 31.12.2014 whereas the Applicant No. 2 retired as Superintending Engineer on 30.04.2009.

10. Learned counsel for the applicants further submitted that the prosecution has failed to produce any material evidence against the applicants and the cognizance taken by the Court of Learned Special Judge (P.C. Act), Lucknow, is without sanction for prosecution as required under Section 19 of the Prevention of Corruption Act, 1988, for Mr. Awadhu Ram, who is still a public servant. The allegations in the Police Report (Chargesheet) do not constitute any prima facie offence against the applicants and are absurd and inherently improbable.

11. Learned counsel for the applicants further submitted that by the order dated 08.09.2015 cognizance taken by the learned Magistrate on printed proforma without assigning any reason is abused of process of law.

12. Learned counsel for the applicants further submitted that after submission of charge sheet the applicants have been summoned mechanically by order dated 08.09.2015 and the learned trial court while summoning the applicants had materially erred and did not follow the dictum of law as propounded by the Hon'ble Supreme Court in various cases that summoning in criminal case is a serious matter and the learned trial court without dwelling into material and visualizing the case on the touch stone of probability should not summon accused person to face criminal trial. The learned trial court has summoned the applicants through a printed proforma order, which is wholly illegal.

13. On the other hand, learned A.G.A-I for the State opposed the argument advanced by learned Counsel for the applicants and submitted that all legal procedures have been duly followed in the process of investigation and filing of the chargesheet. The procedural requirements, including those under the Prevention of Corruption Act, 1988, have been complied with, justifying the learned trial court's decision to proceed with the case.

14. Learned A.G.A-I for the State further submitted that the chargesheet and accompanying evidences established a prima facie case against the applicants under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. The allegations and evidence suggest that the applicants, while serving as members of the Selection Committee, engaged in corrupt practices to derive undue benefits.

15. Learned A.G.A-I for the State further submitted that the learned trial court had upheld the cognizance of chargesheet and subsequent prosecutions in corruption cases based on substantial evidence. The trial court's decision to take cognizance and summon the applicants is totally legal and does not requrire any interference by this Hon'ble Court.

16. After considering the arguments advanced by learned counsel for the parties and perusal of record in light of the submissions made at the Bar and after taking an overall view of all the facts and circumstances of this case, the

nature of evidence and the contents of the F.I.R. as well as summoning order dated 08.09.2015, this court deems it appropriate to discuss the relevant provisions of the Prevention of Corruption Act, 1988.

17. ***Section 13(1)(d) of the Prevention of Corruption Act, 1988***

"Section 13(1)(d): This section defines specific actions that constitute "criminal misconduct" by a public servant. According to this provision, a public servant is said to commit the offense of criminal misconduct if he:

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest."

18. ***Section 13(2) of the Prevention of Corruption Act, 1988***

"Section 13(2): This section prescribes the punishment for the offense defined in Section 13(1). It states that any public servant who commits criminal misconduct as defined in Section 13(1) shall be punishable with imprisonment for a term not less than four years but which may extend to ten years, and shall also be liable to fine."

19. **Section 19** ***of the Prevention of Corruption Act, 1988***

"19. Previous sanction necessary for prosecution.

(1) No Court shall take cognizance of an offence punishable under [sections 7, 11, 13 and 15] [Substituted 'sections 7, 10, 11, 13 and 15' by Act No. 16 of 2018, dated 26.7.2018.] alleged to have been committed by a public servant, except with the previous sanction,

(a) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] [Substituted 'who is employed' by Act No. 16 of 2018, dated 26.7.2018.] in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] [Substituted 'who is employed' by Act No. 16 of 2018, dated 26.7.2018.] in connection

with the affairs of a State and is not removable from his office save by or with sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office.

[Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless-

(i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and

(ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:

Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, presecribe such guidelines as it considers necessary.Explanation. - For the purposes of sub-section (1), the expression "public servant" includes such person-

(a) who has ceased to hold the office during which the offence is alleged to have been committed; or

(b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.]

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which

would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby;

(b) no Court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no Court shall stay the proceedings under this Act on any other ground and no Court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.Explanation. For the purposes of this section,

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

20. After careful scruitiny of the afroesaid legal provisions, this Court finds that the purpose of prosecution sanction is to provide a safeguard against frivolous or vexatious litigation. It ensures that the prosecution of a public servant is based on substantial grounds and is scrutinized by a higher authority before proceeding to trial. The absence of requisite sanction under Section 19 of the Prevention of Corruption Act, 1988 is a critical procedural defect that invalidates the cognizance and subsequent proceedings. As such, the prosecutions initiated without the necessary sanction are deemed null and void.

21. In the present case, the applicants are accused under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. However, several crucial points undermine the legitimacy of the prosecution, which are being reproduced hereunder:-

(i) The applicants were merely members of the Selection Committee for the appointment of Junior Clerks in the Irrigation Department. Their duties were confined to conducting interviews and they had no role in the typing test evaluation or the verification of candidates' qualifications.

(ii) The selection process included a typing test and an interview. It is clear from the records that the applicants had no role in conducting or evaluating the typing test, which was managed by experts from the Directorate of Technical Education and Employment and Training Department, Lucknow. Similarly, the evaluation of educational and sports qualifications was undertaken by a Sub-Committee, independent of the applicants' influence.

(iii) Two inquiries conducted in the year 2011 and 2012 by Mr. Radha Charan and Mr. A.N. Gupta, respectively, did not assign any specific role or criminal conspiracy to the applicants. The Inquiry Reports dated 14.11.2011 and 11.10.2012 do not implicate the applicants in any criminal activity.

(iv) The prosecution has not produced any material evidence against the applicants. The cognizance taken by the Court of Learned Special Judge (P.C. Act), Lucknow, is without the necessary sanction for prosecution as provided under Section 19 of the Prevention of Corruption Act, 1988 for Mr. Awadhu Ram, who remains a public servant. The allegations in the chargesheet do not constitute any prima facie offence against the applicants and are considered absurd and inherently improbable.

(v) The prosecution has failed to produce material evidence against the applicants that would justify the allegations under

> Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. The cognizance and subsequent proceedings appear to lack proper application of judicial mind and are based on insufficient grounds.

22. The procedural requirements of Section 19 of the Prevention of Corruption Act, 1988, and the absence of any substantive evidence implicating the applicants in criminal misconduct, the cognizance taken by the Court of the Learned Special Judge (P.C. Act), Lucknow, is legally untenable. The failure to obtain the mandatory sanction as provided under Section 19 of the Prevention of Corruption Act, 1988 vitiates the entire prosecution process. Therefore, the applicants are entitled to have the criminal proceedings quashed.

23. Further, this Court is also of the view that an another issue for consideration before this Court is that whether the learned Magistrate may summon the accused person on a printed proforma without assigning any reason and take cognizance on police report filed under Sections 173 of Cr.P.C. In this regard, it is relevant to mention here that a Court can take cognizance of an offence only when condition requisite for initiation of proceedings before it as set out in Chapter XIV of the Code are fulfilled. Otherwise, the Court does not obtain jurisdiction to try the offences under section 190 (1) of the Cr.P.C. provided that "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."*

24. At this juncture, it is fruitful to have a look so far as the law pertaining to summoning of the accused persons, by taking cognizance on a police report filed under section 173 of the Cr.P.C., is concerned and the perusal of the case law mentioned herein below would clearly reveal that cognizance of an

offence on complaint is taken for the purpose of issuing process to the accused. Since, it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the material collected by the Investigating Officer results in sufficient grounds to proceed further and would constitute violation of law so as to call a person to appear before the criminal court to face trial. This discretion puts a responsibility on the magistrate concerned to act judiciously keeping in view the facts of the particular case as well as the law on the subject and the orders of Magistrate does not suffers from non-application of judicial mind while taking cognizance of the offence.

25. Fair and proper investigation is the primary duty of the Investigating Officer. No investigating agency can take unduly long time in completing investigation. There is implicit right under Article 21 for speedy trial which in turn encompasses speedy investigation, inquiry, appeal, revision and retrial. There is clear need for time line in completing investigation for having in-house oversight mechanism wherein accountability for adhering to lay down timeline, can be fixed at different levels in the hierarchy, vide **Dilawar vs. State of Haryana, (2018) 16 SCC 521, Menka Gandhi vs. Union of India, AIR 1978 SC 597, Hussainara Khatoon (I) vs. State of Bihar, (1980)1 SCC 81, Abdul Rehman Antulay vs. R.S. Nayak, (1992) 1 SCC 225 and P. Ramchandra Rao vs. State of Karnatka, (2002) 4 SCC 578.**

26. For the purposes of investigation, offences are divided into two categories "cognizable" and "non-cognizable". When information of a cognizable offence is received or such commission is suspected, the proper police officer has the authority to enter in the investigation of the same but where the information relates to a non-cognizable offence, he shall not investigate it without the order of the competent Magistrate. Investigation includes all the proceedings under the Cr.P.C. for the collection of evidence conducted by a police officer or by any person other than a Magistrate (who is authorised by a Magistrate in his behalf). Investigation consists of steps, namely (i) proceeding to spot, (ii) ascertainment of the facts and circumstances of the case, (iii) discovery and arrest of the suspected offender, (iv) collection of evidence relating to the commission of the offence and (v) formation of opinion as to whether on the material collected therein to place the accused before a Magistrate for trial and if so to take necessary steps for the same by filing a charge sheet under Section 173, Cr.P.C., vide **H.N. Rishbud vs. State of Delhi, AIR 1955 SC 196**. Thereafter, the learned Magistrate has to take cognizance after application of judicial mind and by reasoned order and not in mechanical manner.

27. In the case of **Basaruddin & others Vs. State of U.P. and others, 2011 (1) JIC 335 (All)(LB)**, the Hon'ble Court was pleased to observed as under:-

> *"From a perusal of the impugned order, it appears that the learned Magistrate on the complaint filed by the complainant has summoned the accused in a mechanical way filling the date in the typed proforma. Learned Magistrate while taking cognizance of the offence on complaint was expected to go through the allegations made in the complaint and to satisfy himself as to which offences were prima facies, being made out against the accused on basis of allegations made in the complaint. It appears that the learned Magistrate did not bother to go through the allegations made in the complaint and ascertain as to what offences were, prima facie, being made out against the accused on the basis of allegations made in the complaint. Apparently, the impugned order passed by the learned Magistrate suffers from non-application of mind while taking cognizance of the offence. The impugned order is not well reasoned order, therefore, the same is liable to be quashed and the petition deserves to be allowed and the matter may be remanded back to the learned Chief Judicial Magistrate, Lakhimpur Kheri with direction to him to go through the allegations made in the complaint and ascertain as to what offences against the accused were prima facie being made out against the accused on the basis of allegations made in the complaint and pass fresh order, thereafter, he will proceed according to law."*

28. In the case of **Bhushan Kumar and Anr. v. State (NCT of Delhi) and Anr., AIR 2012 SC 1747**, the Hon'ble Apex Court was pleased to observe that Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a pre-requisite for deciding the validity of the summons issued.

29. In the case of **Sunil Bharti Mittal v. Central Bureau of Investigation, AIR 2015 SC 923**, the Hon,ble Apex Court was pleased to observe in paragraph no.47 of the judgment as under:

"47. However, the words "sufficient grounds for proceeding" appearing in the Section are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself.."

30. In the case of **Darshan Singh Ram Kishan v. State of Maharashtra , (1971) 2 SCC 654**, the Hon'ble Court was pleased to observe that the process of taking cognizance does not involve any formal action, but it occurs as soon as the Magistrate applies his mind to the allegations and, thereafter, takes judicial notice of the offence. As provided by Section 190 of the Code of Criminal Procedure, a Magistrate may take cognizance of an offence either, (a) upon receiving a complaint, or (b) upon a police report, or (c) upon information received from a person other than a police officer or even upon his own information or suspicion that such an offence has been committed. As has often been held, taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a police officer. Therefore, when a Magistrate takes cognizance of an offence upon a police report, prima facie he does so of the offence or offences disclosed in such report."

31. In the case of **Ankit Vs. State of U.P. And Another passed in Application U/S 482 No.19647 of 2009 decided on 15.10.2009**, this Court was pleased to observe in paragraph No.8 of the judgment as under:-

"8. In the beginning, the name of the court, case number, state vs. ..... under section ..... P.S. ..... District ..... case crime No. ..... /2009 also have been printed and blanks have been filled up by mentioning the case number, name of the accused, section, P.S. District etc. by some employee. Below afore cited printed matter, the following sentence has been mentioned in handwriting "अभियुक्त अंकित की गिरफ्तारी मा0 उच्च न्यायायल द्वारा Crl. Writ No. 19559/08 अंकित बनाम राज्य में पारित आदेश दिनांक 5.11.08 द्वारा आरोप पत्र प्राप्त होने तक स्थगित थी।"

Below aforesaid sentence, the seal of the court containing name of Sri Talevar Singh, the then Judicial Magistrate-III, has been affixed and the learned magistrate has put his short signature (initial) over his name. The manner in which the impugned order has been prepared shows that the learned magistrate did not at all apply his judicial mind at the time of passing this order and after the blanks were filled up by some employee of the court, he has put his initial on the seal of the court. This method of passing judicial order is wholly illegal. If for the shake of argument, it is assumed that the blanks on the printed proforma were filled up in the handwriting of learned magistrate, even then the impugned order would be illegal and invalid, because order of taking cognizance of any other judicial order cannot be passed by filling up blanks on the printed proforma. Although as held by this Court in the case of ***Megh Nath Guptas & Anr V State of U.P. And Anr, 2008 (62) ACC 826****, in which reference has been made to the cases of* ***Deputy Chief Controller Import and Export Vs Roshan Lal Agarwal, 2003 (4) ACC 686 (SC), UP Pollution Control Board Vs Mohan Meakins, 2000 (2) JIC 159 (SC): AIR 2000 SC 1456 and Kanti Bhadra Vs State of West Bengal, 2000 (1) JIC 751 (SC): 2000 (40) ACC 441 (SC)****, the Magistrate is not required to pass detailed reasoned order at the time of taking cognizance on the charge sheet, but it does not mean that order of taking cognizance can be passed by filling up the blanks on printed proforma. At the time of passing any judicial order including the order taking cognizance on the charge sheet, the Court is required to apply judicial mind and even the order of taking cognizance cannot be passed in mechanical manner. Therefore, the impugned order is liable to be quashed and the matter has to be sent back to the Court below for passing fresh order on the charge sheet after applying judicial mind."*

32. In the case of **Kavi Ahmad Vs. State of U.P. and another passed in Criminal Revision No. 3209 of 2010**, wherein order taking cognizance of offence by the Magistrate under Section 190(1)(b) on printed proforma without applying his judicial mind towards the material collected by the Investigating Officer has been held illegal.

33. In the case of **Abdul Rasheed and others Vs. State of U.P. and another 2010 (3) JIC 761 (All)**. The relevant observations and findings recorded in the said case are quoted below:-

"6. Whenever any police report or complaint is filed before the Magistrate, he has to apply his mind to the facts stated in the report or complaint before taking cognizance. If after applying his mind to the facts of the case, the Magistrate comes to the conclusion that there is sufficient material to proceed with the matter, he may take cognizance. In the present case, the summoning order has been passed by affixing a

> *ready made seal of the summoning order on a plain paper and the learned Chief Judicial Magistrate had merely entered the next date fixed in the case in the blank portion of the ready made order. Apparently the learned Magistrate had not applied his mind to the facts of the case before passing the order dated 20.12.2018, therefore, the impugned order cannot be upheld.*
>
> *7. Judicial orders cannot be allowed to be passed in a mechanical manner either by filling in blank on a printed proforma or by affixing a ready made seal etc. of the order on a plain paper. Such tendency must be deprecated and cannot be allowed to perpetuate. This reflects not only lack of application of mind to the facts of the case but is also against the settled judicial norms. Therefore, this practice must be stopped forthwith."*

34. In view of the above, this Court finds and observes that the conduct of the judicial officers concerned in passing orders on printed proforma by filling up the blanks without application of judicial mind is objectionable and deserves to be deprecated. The summoning of an accused in a criminal case is a serious matter and the order must reflect that Magistrate had applied his mind to the facts as well as law applicable thereto, whereas the impugned summoning order was passed in mechanical manner without application of judicial mind and without satisfying himself as to which offence were prima-facie being made out against the applicants on the basis of the allegations made by the complainant. Thus, the impugned cognizance order passed by the learned Magistrate is against the settled judicial norms.

35. Further, Hon'ble the Supreme Court of India in the case of **Lalankumar Singh and Others vs. State of Maharashtra** reported in **2022 SCC Online SC 1383** has specifically held in paragraph No.38 that the order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. Paragraph No.38 of **Lalankumar Singh and Others (supra)** is being quoted hereunder:-

> *"38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation, which reads thus:*

> *"51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.*
>
> *52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.*
>
> *53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."*

36. Further, Hon'ble the Supreme Court of India has provided guidelines in case of State of **Haryana Vs. Bhajan Lal** reported in **1992 Supp (1) SCC 335** for the exercise of power under Section 482 Cr.P.C. which is extraordinary power and used separately in following conditions:-

> *"102.(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 F.I.R. 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."

37. Further, the Apex Court has also laid down the guidelines where the criminal proceedings could be interfered and quashed in exercise of its power by the High Court in the following cases:- **(i) R.P. Kapoor Vs. State of Punjab, AIR 1960 S.C. 866, (ii) State of Haryana Vs. Bhajanlal, 1992 SCC (Crl.)426, (iii) State of Bihar Vs. P.P. Sharma, 1992 SCC (Crl.)192, (iv) Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.) 283** and **(v) Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra, AIR 2021 SC 1918.**

38. From the aforesaid decisions, the Apex Court has settled the legal position for quashing of the proceedings at the initial stage. The test to be applied by the court is to whether uncontroverted allegation as made prima facie establishes the offence and the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing criminal proceedings to be continued.

39. In **S.W. Palankattkar & others Vs. State of Bihar, 2002 (44) ACC 168**, it has been held by the Hon'ble Apex Court that quashing of the criminal proceedings is an exception than a rule. The inherent powers of the High Court itself envisages three circumstances under which the inherent jurisdiction may be exercised:-(i) to give effect an order under the Code, (ii) to prevent abuse of the process of the court ; (iii) to otherwise secure the ends of justice. The power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

40. In **M/s Pepsi Food Ltd. and another Vs. Special Judicial Magistrate and others: 1998 (5) SCC 749**, Hon'ble Apex Court has observed:

> *"Summoning of an accused in a criminal case, is a serous matter. Criminal law can not 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 the accused. Magistrate had to carefully scrutinize 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."*

41. This Court feels sorry in observing this fact that in spite of several orders passed by the Hon'ble Apex Court as well as this Court, the learned Magistrates are still passing orders and taking cognizance on printed proforma without application of judicial mind.

42. Even in the instant case, there is nothing in the summoning order to show that the Magistrate concerned perused the material available on record before passing summoning order and taking cognizance on the charge sheet. Hence the summoning and cognizance order is bad in the eyes of law and resultantly it is not sustainable as the learned Magistrate failed to look into the oral as well as documentary evidence before the impugned order was passed.

43. Thus, in view of the law laid down by the Hon'ble Apex Court and the facts and circumstances, as narrated above and also with the assistance of the aforesaid guidelines and keeping in view the nature and gravity and the severity of the offence, it deems proper and to meet the ends of justice that the proceeding of the aforementioned case is liable to be quashed.

44. Accordingly, the instant application under Section 482 Cr.P.C. is **allowed**. Keeping in view the law laid down by the Hon'ble Apex Court in the above referred judgment and in view of the submission made by learned counsel for the parties, the entire proceedings of Criminal Case No.319 of 2015 (State Vs. Awadhu Ram & Others), under Sections 13(1)(d) and 13(2) of The Prevention of Corruption Act, 1988 arising out of Crime No.102/2014, Police Station Husainganj, District Lucknow, investigated by CIS(1) CB CID, Lucknow pending in the Court of learned Special Judge (P.C. Act), Lucknow as well as the cognizance/summoning order dated 08.09.2015 are hereby **quashed** so far as it relates to the instant applicants, namely, **Anil Katiyar** and **Sudhir Chandra Khare**.

45. No order as to the costs.

46. The Senior Registrar of this Court is directed to transmit a copy of this judgment and order to the learned District Judges and Chief Judicial Magistrate/Chief Metropolitan Magistrate of all the District Courts of Uttar Pradesh immediately for necessary compliance and information.

Order Date :- 13.06.2024
Saurabh

(Shamim Ahmed,J.)