

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:43064

Reserved on 23.05.2024

Delivered on 14.06.2024

Court No. - 13

Case :- APPLICATION U/S 482 No. - 1252 of 2024

Applicant :- Ishrat

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home
Lko. And Another

Counsel for Applicant :- Prashant Vikram Singh, Akshaya Pratap
Singh, Bhanu Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed, J.

1. Heard Sri Prashant Vikram Singh, learned counsel for the applicant as well as Ms. Ankita Tripathi, learned A.G.A. for the State.

2. As per Office report dated 21.02.2024 notice has been served personally on opposite party No.2, but till date neither anyone has put in appearance nor any counter affidavit has been filed on behalf of the opposite party No.2.

3. The present application under Section 482 Cr.P.C. has been filed for quashing of the impugned Summoning Order dated 05.1.2022 issued against the applicant by Court of Chief Judicial Magistrate, District Unnao, and also to quash entire proceedings of the Case No. 1834/2022, (State of U.P. Versus Chhote Lal and Others) arising out of Case Crime No. 0124 of 2021, Under Section 188, 171-E, 269 and 270 of I.P.C. and Section 123 and 125 of The Representation of People Act, 1951 (herein after referred to

as "Act,1951), registered at Police Station Safipur, District Unnao, pending before Learned Court of Judicial Magistrate, Safipur, District Unnao.

4. Learned counsel for the applicant submits that the informant/opposite party no. 02, Ram Awtar has lodged an F.I.R. dated 25.04.2021 bearing Case Crime No. 0124 of 2021, Under Section 188, 171-E, 269 and 270 of I.P.C. and Section 123 and 125 of the Act 1951, at Police Station Safipur, District Unnao, against the applicant and six other named and 15 unknown persons alleging therein that the applicant along with other six named co-accused and 15 other unknown persons were offering illegal gratification to the Voters in Panchayat Elections and one co-accused namely Sumanlata w/o Chhote Lal was distributing Saree to the Voters and they all were collectively and. deliberately flouting the Covid-19 guidelines.

5. Learned counsel for the applicant further submits that as per version of the F.I.R dated 25.04.2021 the applicant was distributing sarees to the voters through co-accused namely Sumanlata w/o Chhote Lal whereas there was no such mention of the bribery given by the applicant or by his agent or by any other person with the consent of the applicant, which in itself is the most essential ingredient to make out an offence under Section 123 of the Act,1951.

6. Learned counsel for the applicant further submits that Section 125 of the Act,1951 is also levelled against the applicant, which talks about Promoting enmity between classes in connection with election. But, by bare reading of the contents of the F.I.R. the offence of Section 125 of the Act does not make out against the applicant.

7. Learned counsel for the applicant further submits that the statement of the informant and only one witness namely Gokaran Singh, Head Constable was also recorded under Section 161 of Cr. P.C., in which they repeated the version of the F.I.R..

8. Learned counsel for the applicant further submits that the the allegations made by the informant in the F.I.R. are frivolous, concocted and are based on absolutely false statements with a malicious intention to harass the applicant who is a reputed member of the society and has no past criminal record and are not associated with any such activities by far.

9. Learned counsel for the applicant further submits that it is pertinent to mention here that on 03.02.2021, the Secretary (Home), Government of India, New Delhi has issued a letter no. 40-3/2020- DM-I(A) to the Chief Secretaries of all the States, in which certain directions were issued regarding withdrawal/review of criminal cases resulting from alleged violation of standard COVID-19 protocols on merits.

10. Learned counsel for the applicant further submits that Hon'ble High Court sitting at Allahabad passed several orders in CRLP No. 7787 of 2021 (Vinay Kumar and Others Vs State of U. P. and 2 Others) for the compliance of the letter dt. 03.02.2021 issued by the Secretary (Home), Government of India.

11. Learned counsel for the applicant further submits that it can be asserted here that the cognizance taken by the learned Court is based upon, concocted facts and no offence under Section 188, 171-E, 269 and 270 of I.P.C. and Section 123 and 125 of the Act, 1951 is made out against the applicant and the summoning order

dated 05.01.2022 passed by Chief Judicial Magistrate, Unnao is based upon the F.I.R. and statements of the informant and witness without taking into consideration the material evidences available on record and without any application of its judicial mind upon the circumstances of this case is liable to be quashed.

12. Learned AGA submits that the FIR was lodged based on credible information received by the informant about illegal activities conducted by the applicant and co-accused during the Panchayat Elections and allegations of offering illegal gratification to voters and violating COVID-19 guidelines are supported by witness statements and material evidence collected during the investigation.

Learned AGA further submits that the charges under Sections 188, 171-E, 269, and 270 of IPC, and Sections 123 and 125 of the Act, 1951, are applicable based on the actions and intentions of the accused as stated in the FIR and supported by evidence. Section 125 of the Act, concerning promoting enmity, is relevant given the nature of activities and their impact on social harmony during the election period.

The summoning order was issued by the Chief Judicial Magistrate, Unnao, following due procedure and based on the investigation's findings.

The FIR includes specifics about the distribution of sarees to voters, indicating bribery practices as defined under Section 123 of the Representation of People's Act, 1951.

13. After considering the argument advanced by learned counsel for the applicant and learned A.G.A. for the State, this Court finds that the allegations brought against the applicant under Section 188, 171-E, 269, and 270 of the IPC, as well as Sections 123 and 125 of the Representation of People's Act, 1951, appear to be

baseless and malicious. The FIR lodged by the informant, Ram Awtar, is riddled with inconsistencies and lacks the essential ingredients necessary to constitute the offenses alleged.

It is well-established that under Section 195(1)(a)(i) Cr.P.C., no court shall take cognizance of an offense under Sections 172 to 188 IPC except on the complaint in writing by the public servant concerned or some other public servant to whom he is administratively subordinate. The absence of such a complaint in this case renders the proceedings procedurally flawed.

14. Detailed discussion of Relevant Sections with reference to this case are as under:

Section 123 in The Representation of the People Act, 1951

123. Corrupt practices.—

The following shall be deemed to be corrupt practices for the purposes of this Act:—

(1) “Bribery”, that is to say—

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing—

(a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or

(b) an elector to vote or refrain from voting at an election, or as a reward to—

(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting;

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

(a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature.

Explanation.—

For the purposes of this clause the term “gratification” is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78.”

In the instant case, the applicant argues that the allegations do not meet the essential ingredients of bribery as defined under Section 123 of the Act. The FIR alleges that the applicant was involved in distributing sarees to voters, but it does not specify any direct act of bribery by the applicant or his agent with his consent. The lack of detailed allegations fails to substantiate a prima facie case under Section 123.

Section 125. Promoting enmity between classes in connection with election -

"Any person who in connection with an election under this Act promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred, between different classes of the citizens of India shall be punishable, with imprisonment for a term which may extend to three years, or with fine, or with both."

Similarly, the allegations do not support the offense under Section 125 of the Act, which deals with promoting enmity between classes in connection with elections.

The FIR does not contain any specific assertions that the applicant attempted to promote enmity based on religion, race, caste, community, or language.

Sections 269 and 270 IPC: These sections pertain to negligent acts likely to spread infection of disease dangerous to life.

The FIR's allegations about COVID-19 guideline violations do not provide sufficient specifics to sustain charges under these sections.

Section 188 I.P.C. r/w Section 195 Cr.P.C

Section 188 I.P.C. : (Disobedience to Order Duly Promulgated by Public Servant): Disobedience to an order lawfully promulgated by a public servant.

"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 Courts shall take cognizance-

(a) (i) of any offence punishable under section 172 to 188 (both inclusive) of the Indian penal code(45 of 1860), or

(ii) Of any abetment of, attempt to commit such offence, or

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.

**In FAZIL AND ORS. VS. THE STATE AND OTHERS
HIGH COURT OF MADRAS in the Case Crl. O. P. No. 21123
and Crl. M. P. No. 8982 of 2020, Madras High Court has deal
the same issue and observed that-**

"Para-25. In view of the discussion, the following guidelines are issued insofar as an offence under section 188 of IPC, is concerned:

(a) A police officer cannot register an FIR for any of offences falling under section 172 to 188 of IPC.

(b) A Police officer by virtue of the powers conferred under section 41 of Cr.P.C. will have the authority to take action under section 41 of Cr.P.C., when a cognizable offence under section 188 IPC is committed in his presence or where such action is required, to prevent such person from committing an offence under section 188 of IPC.

(c) The role of the police office will be confined only to the preventive action as stipulated under section 41 of Cr.P.C. and immediately thereafter; he has to inform about the same to the public servant concerned / authorized, to enable such public servant to give a complaint in writing before the jurisdictional Magistrate, who shall take cognizance of such complaint on being prima facie satisfied with the requirements of section 188 of IPC. (d) In order to attract the provisions of section 188 of IPC, the written complaint of the public servant concerned should reflect the following ingredients namely;

(i) That there must be an order promulgated by the public servant:

(ii) That such public servant is lawfully empowered to promulgate it;

(iii) That the person with knowledge of such order and being directed by such order to abstain from doing certain act or to take certain order with certain property in his possession and under his management, has disobeyed, And

(iv) That such disobedience causes or tends to cause;

(a) Obstruction, annoyance or risk of it to any person lawfully employed; or

(b) Danger to human life, health or safety; or

(c) A riot or affray.

(d) The promulgation issued under section 30(2) of the police act, 1861, must satisfy the test of reasonableness and can only be in the nature of a regulatory power and not a blanket power to trifle any democratic dissent of the citizens by the police.

(e) The promulgation through which, the order is made known must be by something done openly and in public and private information will not be a promulgation. The order must be notified or

published by beat of drum or in a gazette or published in a newspaper with a wide circulation.

(f) No judicial Magistrate should take cognizance of Final Report when it reflects an offence under section 172 to 188 of IPC. An FIR or a Final Report will not become void ab initio insofar as offences other than section 172 to 188 of IPC and a Final Report can be taken cognizance by the Magistrate insofar as offences not covered under section 195(1)(a)(i) of Cr.P.C.

(g) The Director General of Police, Chennai and Inspector General of the various Zones are directed to immediately formulate a process by specifically empowering public servants dealing with for an offence under section 188 of IPC to ensure that there is no delay in filling a written complaint by the public servants concerned under section 195 (1) (a) (i) of Cr.P.C."

That the case of applicant is squarely covered in point no. (1) of the **Paragraph No. 108 of STATE OF HARYANA V. BHAJAN LAL 1992 Suppl. (1)SCC 335 (Para 108 AIR Cri LJ)** which is as follows-

"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 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 process of any court or otherwise to secure the ends of justice, though it may not be possible to la down any precise, clearly defined and sufficiently channelized an inflexible guidelines or rigid formulate and to give an exhaust 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-

(II) 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.

(III) 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.

(IV) Where the allegation in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by police officer without an order of a Magistrate as contemplated under section 155(2) of the code.

(V) 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.

(VI) 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"

Section 195(1)(a)(i) Cr.P.C. mandates that no court shall take cognizance of an offence under section 188 IPC except on a written complaint by the concerned public servant.

In this case, the absence of such a complaint invalidates the cognizance of the offence under this section. As mandated by

section 195(1)(a)(i) Cr.P.C., a court cannot take cognizance of an offence under section 188 IPC without a written complaint from the concerned public servant.

15. **In M/s Pepsi Food Ltd. and another Vs. Special Judicial Magistrate and others: 1998 UPCR 118**, Hon'ble Apex Court has observed:

“Summoning of an accused in a criminal case, is a serious 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.”

16. 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."

17. 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 Bihar Vs. P.P. Sharma, 1992 SCC (Cri.)192, (iii) Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.) 283 and (iv) Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra, AIR 2021 SC 1918.**

18. 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.

19. In the instant case, the prosecution has failed to provide any evidence or mention of bribery by the applicant or his agent, which is a crucial element for an offense under Section 123 of the Act and the FIR does not contain any allegations that fit the definition of promoting enmity between classes on the grounds of religion, race, caste, community, or language, which is required for an offense under Section 125 of the Act.

The allegations appear to be fabricated and aimed solely at harassing the applicant, who has no prior criminal record and is a reputed member of society. The statements recorded under Section 161 of Cr.P.C. by the informant and the witness do not add any substantive evidence to support the charges.

The letter dated 03.02.2021 from the Secretary (Home), Government of India, and the subsequent orders passed by the Hon'ble Court in CRLP No. 7787 of 2021, emphasize the need to review and withdraw criminal cases related to alleged violations of COVID-19 protocols. This directive was not considered by the Learned Court while taking cognizance of the matter.

20. Thus, in view of the law laid down by the Hon'ble Apex Court and the facts and circumstances, as narrated above, summoning Order dated 05.1.2022 issued against the applicant by Court of Chief Judicial Magistrate, District Unnao, and the entire proceedings of the Case No. 1834/2022, (State of U.P. Versus Chhote Lal and Others) arising out of Case Crime No. 0124 of 2021, Under Section 188, 171-E, 269 and 270 of I.P.C. and Section 123 and 125 of The Representation of People Act, 1951 (herein after referred to as "Act, 1951), registered at Police Station Safipur, District Unnao, pending before Learned Court of Judicial Magistrate, Safipur, District Unnao are against the spirit and directions issued by the Hon'ble Apex Court are liable to be quashed.

21. Accordingly, keeping in view the discussions/observations and judgments of Hon'ble the Apex Court referred above and the facts and circumstances, summoning Order dated 05.1.2022 issued against the applicant by Court of Chief Judicial Magistrate, District Unnao, and entire proceedings of the Case No. 1834/2022, (State of

U.P. Versus Chhote Lal and Others) arising out of Case Crime No. 0124 of 2021, Under Section 188, 171-E, 269 and 270 of I.P.C. and Section 123 and 125 of The Representation of People Act,1951 (herein after referred to as "Act,1951), registered at Police Station Safipur, District Unnao, pending before Learned Court of Judicial Magistrate, Safipur, District Unnao are hereby **quashed**.

22. For the reasons discussed above, the instant application filed by the applicant-Ishrat under Section 482 Cr.P.C. is **allowed**.

23. Learned Senior Registrar of this Court is directed to transmit a copy of this order to the trial court concerned for its necessary compliance.

Order Date :- 14.06.2024

Arvind

(Shamim Ahmed, J.)