

Neutral Citation No. - 2024:AHC-LKO:40954
Reserved on 07.05.2024.
Delivered on 30.05.2024
A.F.R.

Court No. - 27

Case :- APPLICATION U/S 482 No. - 4223 of 2024

Applicant :- Monu Kumar

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

Counsel for Applicant :- Sudhanshu S. Tripathi, Ritwika Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed, J.

1. Heard Shri Sudhanshu S. Tripathi, learned Counsel for the applicant, Shri Ashok Kumar Singh, learned A.G.A-I for the State-opposite parties and perused the entire material placed on record.

2. The present application under Section 482 Cr.P.C. has been filed on behalf of the applicant, namely-Monu Kumar seeking quashing of the impugned summoning order dated 30.01.2024 passed by learned Civil Judge, Senior Division (F.T.C.) Unnao in Criminal Case No.141/2024 (State of U.P. vs. Sachin and Ors.), arising out of Case Crime No.283/2023 under Section 294 I.P.C., Police Station-Achalganj, District-Unnao and the impugned charge sheet no.204/2023 dated 24.12.2023 arising out of Case Crime No.283/2023 under Section 294 I.P.C., Police Station-Achalganj, District-Unnao and also the entire as well as consequential proceedings of Criminal Case No.141/2024 (State of U.P. vs. Sachin and Ors.) arising out of arising out of Case Crime No.283/2023 under Section 294 I.P.C., Police Station-Achalganj, District-Unnao pending in the court of learned Civil Judge, Senior Division (F.T.C.) Unnao.

3. Learned Counsel for the applicant submitted that the opposite party No.2 and his associate police personnel who were patrolling within their jurisdiction for prevention of crime and got information from the reliable informer in Korari Bazaar that three persons are doing obscene acts against

the passing women of the area, wherefore the opposite party No.2 caught the Applicant red-handed and registered the F.I.R. bearing Case Crime No. 283 of 2024, under sections 294 IPC, at Police Station Achalganj, District Unnao on 17.12.2023 alleging therein that applicant was passing obscene comments on the females, who were passing by from Jumka Nala bridge.

4. Learned Counsel for the applicant further submitted that on perusal of arrest-cum-recovery memo, dated 17.12.2023, which reveals that despite the alleged incident having been taken place at a bridge connecting a busy road which had all access to the general members of public, there are no independent witnesses of the aforesaid arrest-cum-recovery memo. Moreover, the aforesaid arrest-cum-recovery proceedings have been conducted by the police in gross violation of provisions of section 100 and 165 Cr.P.C rendering the entire proceeding illegal and unworthy of any credit.

5. Learned Counsel for the applicant further submitted that on perusal of the aforementioned FIR and arrest-cum-recovery memo which makes it clear that there was complete haste in proceeding against the applicant that within one and half hour of arresting the applicant, opposite party No.2 got the FIR registered without preparation of any site plan or making any effort to examine any of the independent eye-witnesses or examining any of passing by females against whom allegedly the applicant was passing of obscene comments.

6. Learned Counsel for the applicant further submitted that the applicant was immediately arrested alongwith other co-accused who happened to be his friends and consequently, he was enlarged on bail on the very same day which is evident from the perusal of entry no.5 of CD Parcha no.1, dated 17.12.2023. He further submitted that while being released on bail assurances were extended to the applicant from the police personnel that no further action will be taken against the applicant in connection with the alleged offence in question. Moreover, the applicant only became aware of the fact that instant case is pending against him is when summoning order was passed against him by the learned trial court.

7. Learned Counsel for the applicant further submitted that the investigation of the instant case has been conducted in a tainted, botched- up and hasty manner by the police merely in order to show up the good work and has proceeded to make out a false, fabricated and concocted case and has falsely implicated the applicant in the present case whereas the police has completely ignored the mandatory provisions of criminal law. The haste in finalizing the investigation in the instant case is evident from the fact that within a week after registration of the FIR, the impugned charge-sheet was filed wherein only the statement of members of police party on one day and on another day site plan was prepared and statement of the informant was recorded. He further submitted that neither any independent witness was examined nor any females were examined, who were being annoyed by the alleged obscene comments of the applicant.

8. Learned Counsel for the applicant further submitted that the statement of all members of police party and witness of arrest-cum- recovery memo, namely Head Constable Avjesh Singh, Constable Sunil Kumar, Lady Constable Gulistan and Lady Constable Pushpa Chauhan was recorded on 20.12.2023 under section 161 Cr.P.C, wherein they have verbatim reiterated the contents of the arrest-cum-recovery memo which creates substantial doubt on the veracity of their statement as well as the prosecution story which in itself is devoid of any credence.

9. Learned Counsel for the applicant further submitted that the statement of the Informant, i.e., opposite party No.2 was recorded on 24.12.2023 under section 161 Cr.P.C wherein, he has verbatim reiterated the contents of the arrest-cum-recovery memo which creates substantial doubt on the veracity of his statement as well as the prosecution story which in itself is devoid of any credence.

10. Learned Counsel for the applicant further submitted that the investigation has been conducted in a tainted manner, which is also evident from the fact that site plan of place of occurrence which is usually prepared at the earliest was the last thing done by the investigating officer on 24.12.2023

between 11:00 am to 14:00 pm and on the same he went on to file the charge-sheet.

11. Learned Counsel for the applicant further submitted that the applicant is a bright undergraduate student studying at Rajkiya Mahavidyalaya, Unnao affiliated to Chhatrapati Sahu Ji Maharaj University, Kanpur and presently pursuing Bachelor of Arts course (Humanities and Social and in support of the same, college Identity Card, fee deposition receipt, 5th semester result, hall ticket of 5th Semester alongwith fifth semester examination schedule are being placed on record. He further submitted that the applicant is a bright student whose entire life and career is at stake, which will be ruined due to his false implication in the instant case. Moreover, at the time of registration of the FIR the applicant was merely 20 and half years of age and had no occasion to commit the alleged offence in question.

12. Learned Counsel for the applicant further submitted that the applicant is a resident of Korari Kalan and after taking his exam on 16.12.2023 had went to the house of his paternal-aunt (Bua) who resides at nearby village in Korari Khurd and while returning from there he was intercepted by the police personnel because he was doing tripling on motorcycle and thereafter, the applicant was arrested and falsely implicated in the instant case.

13. Learned Counsel for the applicant further submitted that the present case is a classic example wherein false allegations have been leveled by the opposite party No.2 with an ulterior motive to show up the police good work in his jurisdiction without caring for the disrepute it brings to the applicant and his family as well as harassment to the applicant is being put to because of all such serious allegations. Moreover, such cases not only bring disrepute but also cause harassment of an innocent person.

14. Learned Counsel for the applicant further submitted that even if all the allegations levelled against the applicant are prima facie viewed, the offence alleged to have been committed by the applicant is not made out since mere use of abusive, humiliating or defamative words by itself cannot attract an offense under section 294 of IPC. In order to bring home the charge under

section 294 of IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is completely lacking in the instant case.

15. Learned Counsel for the applicant further submitted that the applicant has neither directly nor indirectly induced or threatened or promised any person acquainted with the facts of the case so as to dissuade them from disclosing the facts before the court or any police officer.

16. Per contra, learned A.G.A-I for the State-opposite party has vehemently opposed the contentions made by learned Counsel for the applicant and submits that there was ample evidence against the applicant, who was present at the railway crossing at the time of incident and the police party in a very cautious manner nabbed him red handed, while he was creating nuisance in a public place and was passing obscene comments on the girls and ladies. Thereafter, the police has thoroughly conducted the inquiry against the applicant and has filed a charge sheet against him considering the material on record, thus, he submits that the trial court has correctly took the cognizance of the charge sheet and has rightly summoned the applicant to face trial in the aforesaid case. He further submits that no interference by this Court is required in the matter and the present application being devoid of merit and substance is liable to be rejected.

17. I have heard learned Counsel for the parties.

18. On careful perusal of averments made in this application under Section 482 Cr.P.C. as well as after hearing the learned Counsel for the parties, the factual matrix discloses that the opposite party No.2 and his associate police personnel, who were patrolling within their jurisdiction for prevention of crime and got information from the reliable informer in Korari Bazaar that three persons were doing obscene acts against the passing women of the area, wherefore the opposite party No.2 caught the applicant red-handed and registered the F.I.R. bearing Case Crime No. 283 of 2024, under sections 294 IPC, at Police Station Achalganj, District Unnao on 17.12.2023 alleging therein that applicant was passing obscene comments on the females, who

were passing by from Jumka Nala bridge, and on perusal of arrest-cum-recovery memo, dated 17.12.2023, which reveals that despite the alleged incident having been taken place at a bridge connecting a busy road which had all access to the general members of public, there is no independent witness of the aforesaid arrest-cum-recovery memo. Moreover, the aforesaid arrest-cum-recovery proceedings have been conducted by the police in gross violation of provisions of section 100 and 165 Cr.P.C. Further, opposite party No.2 got the FIR registered without preparation of any site plan or making any effort to examine any of the independent eye-witnesses or examining any of passing by females against whom allegedly the applicant was passing of obscene comments and while being released on bail assurances were extended to the applicant from the police personnel that no further action will be taken against the applicant in connection with the alleged offence in question. Moreover, the applicant only became aware of the fact that instant case is pending against him is when summoning order was passed against him by the learned trial court.

19. Further, on perusal of records, it appears that the investigation of the instant case has been conducted in a tainted, botched- up and hasty manner by the police merely in order to show up the good work and has proceeded to make out a false, fabricated and concocted case and has falsely implicated the applicant in the present case wherein, the police has completely ignored the mandatory provisions of criminal law. The haste in finalizing the investigation in the instant case is evident from the fact that within a week after registration of the FIR, the impugned charge-sheet was filed wherein only the statement of members of police party on one day and on another day site plan was prepared and statement of the informant was recorded and neither any independent witness was examined nor any females were examined, who were being annoyed by the alleged obscene comments of the applicant.

20. It is further observed here that the applicant is a bright undergraduate student studying at Rajkiya Mahavidyalaya, Unnao affiliated to Chhatrapati Sahu Ji Maharaj University, Kanpur and presently pursuing Bachelor of Arts course (Humanities), whose entire life and career is at stake, which will be

ruined due to his false implication in the instant case. Moreover, at the time of registration of the FIR the applicant was merely 20 and half years of age and had no occasion to commit the alleged offence in question.

21. Further, the trial court has failed to appreciate the fact that while filing the charge sheet, the Investigating officer has failed to comply with the mandatory provisions of criminal law and has passed the impugned summoning order 30.01.2024, which is nothing but an abuse of process of law.

22. Further the Hon'ble Supreme Court of India in the case ***Inder Mohan Goswami v. State of Uttaranchal (2007)12 SCC 1*** has held that it would be relevant to keep into mind the scope and ambit of section 482 Cr.PC and circumstances under which the extra ordinary power of the court inherent therein as provisioned in the said section of the Cr.P.C. can be exercised, para 23 is being quoted here under:-

"23. This court in a number of cases has laid down the scope and ambit of courts powers under section 482 Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under section 482 Cr.P.C. can be exercised:

(i) to give effect to an order under the Code;

(ii) to prevent abuse of the process of court, and

(iii) to otherwise secure the ends of justice."

23. 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."

24. 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."

25. Further the Hon'ble Supreme 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 (Crl.)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.*

26. 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.

27. It is further observed there that the object and scope of the section 294 of IPC is intended to prevent an obscene or indecent act being performed in public to the annoyance of public at large. Section 294 I.P.C. is reproduced hereinunder:-

"Section 294 :Obscene acts and songs

Essential ingredients :

1. *Doing of any obscene act in a public place, or*
2. *Anyone sings,recite or utters any obscene song,ballad or words in or near any public place*
3. *By such act annoyance is caused to a particular person or persons in general."*

28. Thus, from the aforesaid, it is clear that mere performance of obscene or indecent act is not sufficient, but there must be a further proof establish that it was to the annoyance of others, thereby annoyance to others is essential to constitute an offence under this section. Moreso, when the said section says "annoyance to others" is a prerequisite to invoke the provision, then the issue of "obscenity or indecency per se" will not arise until or unless there is evidence on record to see that a person at a given time witnessing particular obscene act was actually annoyed or not. He further submitted that none of the female have been examined to establish that the alleged act of passing obscene comment upon the passing females have caused them annoyance and in absence of such evidence the impugned charge-sheet and summoning order are devoid of any merit and gross abuse of process of law.

29. Further, the instant case is a gross misuse of penal laws in particular and criminal law in general since no criminal offence is made out from the perusal of aforesaid facts and the impugned summoning order has been passed in an arbitrary manner without giving consideration to the material on record and lack of due application of judicial mind.

30. Thus, in view of the law laid down by the Hon'ble Supreme Court and in light of the observations and discussions made above and keeping view the facts and circumstances of the case, and from the perusal of the record, the impugned summoning order dated 30.01.2024 passed by learned Civil Judge, Senior Division (F.T.C.) Unnao in Criminal Case No.141/2024 (State of U.P. vs. Sachin and Ors.), arising out of Case Crime No.283/2023 under Section 294 I.P.C., Police Station-Achalganj, District-Unnao and the impugned charge sheet no.204/2023 dated 24.12.2023 arising out of Case Crime No.283/2023 under Section 294 I.P.C., Police Station-Achalganj, District-Unnao and also the entire as well as consequential proceedings of Criminal Case No.141/2024 (State of U.P. vs. Sachin and Ors.) arising out of arising out of Case Crime No.283/2023 under Section 294 I.P.C., Police Station-Achalganj, District-Unnao pending in the court of learned Civil Judge, Senior Division (F.T.C.) Unnao and are liable to be quashed as the investigation of the instant case has been conducted in a tainted, botched- up and hasty manner by the police merely in order to show up the good work and has proceeded to make out a false, fabricated and concocted case and has falsely implicated the applicant in the present case wherein, the police has completely ignored the mandatory provisions of criminal law. The haste in finalizing the investigation in the instant case is evident from the fact that within a week after registration of the FIR, the impugned charge-sheet was filed wherein only the statement of members of police party on one day and on another day site plan was prepared and statement of the informant was recorded and neither any independent witness was examined nor any females were examined, who were being annoyed by the alleged obscene comments of the applicant.

31. Accordingly, the impugned summoning order dated 30.01.2024 passed by learned Civil Judge, Senior Division (F.T.C.) Unnao in Criminal Case No.141/2024 (State of U.P. vs. Sachin and Ors.), arising out of Case Crime No.283/2023 under Section 294 I.P.C., Police Station-Achalganj, District-Unnao and the impugned charge sheet no.204/2023 dated 24.12.2023 arising out of Case Crime No.283/2023 under Section 294 I.P.C., Police Station-Achalganj, District-Unnao and also the entire as well as consequential proceedings of Criminal Case No.141/2024 (State of U.P. vs. Sachin and Ors.)

arising out of arising out of Case Crime No.283/2023 under Section 294 I.P.C., Police Station-Achalganj, District-Unnao pending in the court of learned Civil Judge, Senior Division (F.T.C.) Unnao are hereby quashed.

32. For the reasons discussed above, the instant application under Section 482 Cr.P.C. filed by the applicant is *allowed* in respect of the instant applicant, namely-Monu Kumar.

33. Office is directed to transmit a copy of this order to the trial court concerned for its necessary compliance.

34. No order as to cost(s).

Order Date :- 30.05.2024
Piyush/-

(Shamim Ahmed,J.)