AFR

Court No. - 28

Case :- APPLICATION U/S 482 No. - 4003 of 2023

Applicant :- Ashok Kumar Singh
Opposite Party :- State Of U.P Thru. Prin. Secy. Home Govt. Lko. And Another
Counsel for Applicant :- Ravi Kant Pandey
Counsel for Opposite Party :- G.A.

Hon'ble Shree Prakash Singh,J.

1. At the very outset, Sri Kailash Nath Mishra, learned counsel appearing for the opposite party no. 2 has raised a preliminary objection that this application under section 482 Cr.P.C. is not maintainable against the order dated 06-04-2023 passed by the learned Additional District & Sessions Judge, Gonda.

2. He added that the impugned order has been passed while invoking the jurisdiction under section 319 of Cr.P.C. and it's not an interlocutory order and the same is revisable and therefore invoking the inherent powers under section 482 of Cr.P.C., is barred as the inherent power can be invoked, when there is no overt or express provision in the Criminal Procedure Code or otherwise any alternative remedy is available.

3. In support of his contentions, he has placed reliance on the Judgment of the Apex Court rendered in the case of Mohit alias Sonu and Another Versus State of U.P. and Another(Criminal Appeal No. 814 of 2013) decided on 1st July, 2013 and has referred paragraph no. 23 of the aforesaid Judgment, which is quoted hereinunder :-

"*23. So far as the inherent power of the High Court as contained in Section 482 of Cr.P.C. is concerned, the law in this regard is set at rest by this Court in a catena of decisions. However, we would like to reiterate that when an order, not interlocutory in nature, can be assailed in the High Court in revisional jurisdiction, then there should be a bar in invoking the inherent jurisdiction of the High Court. In other words, inherent power of the Court can be exercised when there is no remedy provided in the Code of Criminal Procedure for redressal of the grievance. It is well settled that inherent power of the court can ordinarily be exercised when there is no express provision in the Code*

under which order impugned can be challenged. "

4. Relying on the aforesaid, he submits that the Apex Court has reiterated that if an order is not interlocutory, the same can be assailed in the High Court, in revisional jurisdiction and therefore, the remedy of revision is available to the applicant and invoking inherent powers in such conditions is barred, thus the instant application may be dismissed on this ground alone.

5. Per contra, Sri Amrendra Nath Singh, learned Senior Counsel appearing for the applicant submits that the ratio of the Judgment in Mohit alias Sonu & Another(Supra) is not a good law and he has placed reliance on the Judgment rendered in Prabhu Chawla Vs. State of Rajasthan & and Anr., reported in ABC 2016(II)126 SC and has referred paragraph nos.6 & 7 of the said Judgement, which are quoted hereinunder :-

"*6. In our considered view any attempt to explain the law further as regards the issue relating to inherent power of High Court under Section 482 Cr.P.C. is unwarranted. We would simply reiterate that Section 482 begins with a non-obstante clause to state: "Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effectto any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice." A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J. "abuse of the process of the Court or other extraordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more." We venture to add a further reason in support. Since Section 397 Cr.P.C. is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under Section 482 Cr.P.C. only to petty interlocutory orders! A situation wholly unwarranted and undesirable.*

"*7. As a sequel, we are constrained to hold that the Division Bench, particularly in paragraph 28, in the case of Mohit alias Sonu and another(supra) in respect of inherent power of the High Court in Section 482 of the Cr.P.C. does not state the law correctly. We record our respectful disagreement.*"

6. Relying on the aforesaid, he submits that the Apex Curt while considering the law propounded in the case of Mohit alias Sonu Vs. State of

U.P(Supra), has overruled the ratio of the Judgement, which was rendered in paragraph no. 28 and held that the inherent power of the High Court under section 482 Cr.P.C., which was otherwise, interpreted by the earlier Bench, is not correct law. He added that in the subsequent Judgments, Hon'ble Apex Court has held that Section 482 of Cr.P.C. begins with non obstante clause and therefore, in case of abuse of process of law, inherent power can be invoked and there is no limitation except the self restraining, thus, the summoning order, which was passed under section 319 of Cr.P.C. can very well be challenged while invoking the jurisdiction under section 482 Cr.P.C.

7. Mr. Anirudh Kumar Singh,learned A.G.A.-I appearing for the State has submitted that for understanding the ambit and scope of Section 482 of Cr.P.C., it would be appropriate to go into the history of the enactment of the said provision. He added that on 01-01-1862, the first Code of Criminal Procedure came into force in India and that did not contain any provision recognizing the inherent powers of the High Court. Thereafter, in 1898, the provisions recognizing the inherent powers of the High Court also did not contain and in 1908, when the Code of Civil Procedure was enacted and inherent powers under section 151 of the C.P.C. was envisaged, then the judicial opinion across the country became divergent that on whether the High Courts on criminal side also should have inherent powers. Prior to 1923, there were several verdicts of the High Courts that provision like Section 151 of the C.P.C.is nowhere in the Cr.P.C. and observed that conscious omission of the law makers omit the inherent powers of the criminal courts. This divergence of opinion was done away with by the amendment of the Cr.P.C. in 1923, known as Criminal Procedure Code, 1898(Amendment Act, 1923). By virtue of the aforesaid amendment, Section 561-A was inserted, which is quoted hereinunder :-

"Saving of inherent power of High Court"Division"-

561-A. Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court "Division" to

make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

8. He added that thereafter, in Criminal Procedure Code, 1973, it was contained as Section 482, under Chapter XXXVII of the Code, which is titled as Miscellaneous Chapter.

9. Referring the aforesaid, he submits that the exercise of inherent powers under section 561-A of Cr.P.C. is to give effect to an order under the Code, or to prevent abuse of process of the Court and to otherwise secure the ends of justice. He added that no limitation can be put on the powers of the High Courts given in Section 482 Cr.P.C. known as inherent powers and had there been any intention of the legislature for any kind of limitation, that would have been given in the provisions itself.

10. Further submission is that the ratio of the Judgment in the case of Mohit alias Sonu and another(Supra) is now, not a good law, as much water has flown as considering the aforesaid ratio of the Judgment, the several Judgments have been passed by the Apex Court including the Judgment in the case of Prabhu Chawla Versus State of Rajasthan and Another(Supra), wherein the ratio of Judgment in the case of Mohit alias Sonu and Another(Supra) has been overruled. Thus, the submission is that there is no merit in the contentions of the learned counsel for the opposite party no. 2 and the same may be rejected.

11. Considering the submissions of learned counsel for the parties and the historical background of inherent powers envisaged under section 482 of Cr.P.C., it transpires that prior to the enactment of the Criminal Procedure Code,1973, in the old Cr.P.C. i.e. Cr.P.C. 1898(Amendment) Act,1923, for the first time, the inherent powers of the High Courts were promulgated as under section 561-A. The aforesaid provision came into existence after thorough discussion, in the Forty First Report of the Law Commission Of India. The observations of the Law Commission in it's report are as follows :-

"*This statutory recognition, however, extends only to the inherent powers of the High Court. One may compare it with the recognition of the inherent powers of all civil courts by section 151, Civil Procedure Code.*

In a number of decisions before and after the enactment of section 561-A, various High Courts have also recognised the existence of such power in subordinate Courts. We would, therefore, recommend a statutory recognition of such inherent power which has been recognised as vesting in all subordinate criminal courts.

However, the general principle of law is that the inherent power of a court can be exercised only to give effect to orders made by it or to prevent abuse of its own processes."

We agree with the recommendation. We do not, however, consider it necessary or desirable to go further and recognise an "inherent power" in Courts of Session and other Courts of Appeal to pass appropriate orders to prevent the abuse of the process of any subordinate Court."

12. The parliament accepting the recommendations of Forty First Report of Law Commission of India, envisaged the provisions of inherent powers u/s 561-A of Cr.P.C.(old).

13. After enactment of the aforesaid provisions; time and again, the Apex Court has interpreted the meaning of the inherent powers given under section 482 of Cr.P.C. and it has been settled that the High Court can exercise the inherent powers to prevent the abuse of process of the Court for giving effect to the orders under the Code and to secure the ends of justice and the same should be exercised sparingly, but, at the same time, it is also noticeable that no bar provided in any Judgment with respect of invoking inherent powers, exercising jurisdiction under 482 of Cr.P.C. by the High Courts and infact, this is also the intent of the legislature while enacting the aforesaid provisions as no bar has been put on the inherent powers of the High Courts and this provision has been put in the Miscellaneous Chapter in the Cr.P.C. 1973. The very starting words of the provision says '*Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court;* which clearly shows that no provision of Cr.P.C. can be read overriding the

provisions of Section 482 of Cr.P.C.

14. It reveals that in case of Mohit alias Sonu and another Vs. State of U.P.(Supra), it was held by the Apex Court that High Court while exercising its revisional jurisdiction, considering the legality and propriety of the order under section 319 of Cr.P.C., is required to give notice and opportunity of hearing to a person and further held that the inherent power of the High Court can be exercised when there is no remedy provided under the Code of Criminal Procedure for redressal of the grievance, though this question has again been raised and came for consideration before the Apex Court in the case of Prabhu Chawa(Supra) wherein, the Apex Court has very categorically held in para nos. 6 & 7 that inherent powers of the High Court under section 482 of Cr.P.C. cannot be barred by the alternative remedy provided under the Cr.P.C.

15. When this court further examines this issue, it is apparent from the bare reading of the provisions of section 482 of Cr.P.C. that the same starts with obstante clause i.e. "Nothing in this code shall be deemed to limit or affect the inherent powers of the High Court". This shows the intents of the legislature in so many words that any provision of Cr.P.C. can not said to be an alternative remedy in reference with the provisions of Section 482 of Cr.P.C and even no provision of Cr.P.C. can limit the inherent powers of High Court.

16. In view of the aforesaid submissions and discussions, the preliminary objection raised by the learned counsel for the opposite party no. 2 is hereby rejected.

17. Heard Sri Amrendra Nath Singh, learned Senior Counsel assisted by Sri Ravi Kant Pandey, learned counsel for the applicant, Sri K.N.Mishra, learned counsel for the opposite party no. 2, Sri Anirudh Kumar Singh, learned A.G.A.-I for the State.

18. By means of the instant application under section 482 Cr.P.C. prayer has been made to quash the summoning order dated 06-04-2023 passed by the learned Additional District and

Sessions Judge, Court No. 3, Gonda under section 319 Cr.P.C. in Sessions Trial No. 1028 of 2020, (State Vs. Awadh Kishor Tiwari and Others), arising out of Case Crime No. 184 of 2020, under sections 302,201 I.P.C., Police Station-Umari Begumganj, District-Gonda.

19. Learned Senior Counsel appearing for the applicant submits that by means of the instant application, the applicant has assailed the impugned order dated 06-04-2023 passed under section 319 of Cr.P.C. He submits that the factual matrix of the case is that a first information report was lodged with the allegation that one Rajveer @ Ranu was murdered by his brother, wherein the accused persons namely, Awadh Kishor Tiwari, Ram Kishor, Ashok Kumar Singh(present applicant) and Lalit Singh were named and after thorough investigation of the matter was done by the Investigating Officer and the Chargesheet was filed against the accused persons namely,Awadh Kishor and Kamla and the final report was submitted. The name of the present applicant was expunged at the time of investigation itself. He further added that the trial proceeded and chargesheet was filed and summons were issued against the other co-accused persons and when the statements of P.W.-1, P.W.-2 and P.W.-3 were recorded before the trial court, an application under section 319 of Cr.P.C. was filed and objection was also submitted by the present applicant. He added that learned Magistrate while passing the impugned order dated 06-04-2023 has put the statements of the prosecution witnesses in vibratum, in the order and no finding has been recorded to the degree of satisfaction that there was much stronger case available. In support of his contentions, he has placed reliance on the Judgment of Apex Court in the case of Hardeep Singh Vs. State of Punjab and Others, reported in (2014) 3 Supreme Court Cases, 92 and has referred the paragraph no. 117.5 of the said Judgment, wherein the question no.(iv) has been answered. Para no. 117.5 of the said judgment is quoted hereinunder :-

"*Q.IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an*

accused? Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

117.5. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial – therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different."

20. Referring the abovesaid, he submits that it has been held by the Apex Court that the degree of the satisfaction while deciding an application under section 319 Cr.P.C. is required to be recorded. He further added that in the course of deciding the application under section 319 Cr.P.C., the material must be disclosed against the newly summoned accused.

21. He has next referred the Judgment and order in the case of Brijendra Singh and Others Vs. State of Rajasthan, reported in (2017) 7 Supreme Court Cases, 706 and has referred paragraph no. 15 of the aforesaid Judgment, which is extracted hereinunder :-

"*15. This record was before the trial court. Notwithstanding the same, the trial court went by the deposition of complainant and some other persons in their examination-in-chief, with no other material to support their so- called verbal/ocular version. Thus, the 'evidence' recorded during trial was nothing more than the statements which was already there under Section 161 Cr.P.C. recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial court was at least duty bound to look into the same while forming prima facie opinion and to see as to whether 'much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record. There is no satisfaction of this nature. Even if we presume that the*

trial court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even when this material on record was specifically brought to the notice of the High Court in the Revision Petition filed by the appellants, the High Court too blissfully ignored the said material. Except reproducing the discussion contained in the order of the trial court and expressing agreement therewith, nothing more has been done. Such orders cannot stand judicial scrutiny."

22.Placing reliance on the aforesaid Judgment, he added that it has been held by the Apex Court that while deciding the application under section 319 of Cr,.P.C., trial court has to look into, as to whether there are much stronger evidence than mere possibility of the complicity is available on record ? and the satisfaction in this regard, is also to be recorded. He submits that so far as the present case is concerned, the trial court while passing the impugned summoning order did not apply it's judicial mind and the law propounded by the Apex court and thus, the order dated 06-04-2023 is not sustainable in the eyes of law and therefore, the same may be set aside.

23. Contradicting the abovesaid contentions, learned counsel for the opposite party no. 2, has vehemently opposed the plea and arguments of the counsel for the applicant and submits that the learned trial court has recorded a detailed finding and has also mentioned the statements of the prosecution witnesses no. 1 to 3, which are apparent from the order itself. He submits that in the finding clause, it is also recorded that there is prima-facie case against the present applicant as per the statements and evidences adduced by the prosecution and also got examined by the prosecution before the trial court. He also added that there are detailed discussion and reasoning made by the trial court in the impugned order and as such, there is no erroneousness or perversity and thus, the instant application has no merit and is liable to be dismissed.

24. Learned A.G.A. appearing for the State has also opposed the contentions of learned counsel for the applicant and submits that the learned trial court has rightly passed the impugned order considering the statements of the prosecution

witnesses, which establishes more than the prima-facie case against the applicant, and thus, no interference is warranted.

25. Having heard learned counsel for the parties and after perusal of the material placed on record, it transpires that the impugned summoning order dated 06-04-2023 passed by the trial court is on an application under section 319 Cr.P.C. From perusal of the impugned order, it emerges that the statements of the P.W.-1 to P.W.-3 have been mentioned in verbatim in the order and it is recorded that there is prima-facie case against the applicant and thus, the applicant has been summoned.

26. This court has also noticed the fact that initially the present applicant was also named in the first information report and an investigation was done, wherein his name was expunged as the Investigating Officer while collecting the evidences against the accused persons, did not find material evidences with respect to involvement of the present applicant and thereafter final report was submitted.

27. It also transpires from the impugned order that the trial court found that there is prima-facie case against the present applicant, whereas, as per the law laid down by the Apex Court, more than prima-facie, case or much stronger cases, is required while summoning such accused thereby invoking the jurisdiction under section 319 of Cr.P.C. The power given to the court under section 319 of Cr.P.C.is a discretionary and extraordinary and therefore, the same should be exercised sparingly and further it is not to be exercised in supine and cavalier manner. The strong and cogent evidence is warranted for test of degree of satisfaction.

28. This court is also not unmindful to the Judgment and ratio rendered in the case of Brijendra Singh and Others Vs. State of Rajasthan(Supra), which clearly holds that much stronger evidence than mere possibility of complicity is required in the cases, where the trial court is invoking the jurisdiction under section 319 of Cr.P.C. while summoning the accused.

29. When this court examines the impugned order passed by the learned Additional District and Sessions Judge, Gonda in the light of the ratio of the Judgments aforesaid, it emerges from the order itself that the learned Additional District & Sessions Judge, has found prima-facie, a case against the applicant and there is no such finding or the degree of satisfaction recorded that there are much stronger case available against the applicant and as such, this court finds that the learned trial court has ignored the law enunciated by the Apex Court.

30. Resultantly, the impugned order dated 06-04-2023 is hereby set aside.

31. The matter is remitted back to the trial court concerned, to take a fresh decision, after considering the application under section 319 of Cr.P.C., within a period of sixty days, from the date of this order.

32. With the aforesaid observations, the instant application is hereby **allowed.**

Order Date :- 27.4.2023
AKS