

Court No. - 27

Case :- APPLICATION U/S 482 No. - 2250 of 2024

Applicant :- Faizan Ahmad @ Idrisi Faizan Shamshad Ahmad And Others

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

Counsel for Applicant :- Israr Ahmad Ansari, Vinod Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Israr Ahmad Ansari, the learned counsel appearing for the applicant and Sri Gyanendra Singh, the learned Additional Government Advocate and perused the record.

2. By means of the instant application filed under Section 482 Cr.P.C., the applicant has sought quashing of the proceedings of summoning order dated 11.03.2019 passed by the Judicial Magistrate-II, Lucknow in Criminal Case No.18386 of 2017 under Sections 153, 506 IPC, Police Station Hasanganj, Lucknow as well as charge-sheet dated 29.03.2018 filed in respect of the Case Crime No.0724 of 2017 under Sections 153, 506 IPC.

3. Opposite party No.2 lodged FIR No.724 in Police Station Hasanganj, Lucknow on 23.07.2017 stating that three persons had entered a temple campus while a religious preaching was going on there and they started raising slogans hailing another country and against our nation. They also threatened the persons present there. Some PAC persons and the persons present there caught hold of three persons, who are the applicants.

4. During investigation, the investigating officer has recorded statements of some eye witnesses, who have supported the FIR allegations.

5. The submission of the learned counsel for the applicants is that there is absolutely no material to establish that the applicants have committed any offence.

6. FIR alleges extending of threats and raising objectionable slogans by three persons. All the three persons were arrested on the spot and those persons are the applicants.

7. Some independent witnesses examined by the investigating officer stated that the incident was witnessed by them and it was given effect to by the applicants.

8. While deciding the application under Section 482 Cr.P.C. this Court can merely examine as to whether the case for trial of the accused person is made out on the basis of prosecution allegations and the material collected in support thereof and this Court cannot go into questions of admissibility, relevancy or sufficiency of material collected by the prosecution while deciding the application under Section 482 Cr.P.C. for quashing of the charge-sheet and proceedings arising therefrom.

9. State of Haryana Vs. Bhajan Lal, 1992 Supp (1) SCC 335, the Hon'ble Supreme Court has held that:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3). Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

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

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

10. In Central Bureau of Investigation vs. Aryan Singh, 2023 SCC Online 379, the Hon'ble Supreme Court has held that while exercising a power under Section 482 Cr.P.C this court cannot go into the disputed question of fact and hold a mini trial to adjudicate the correctness of the allegations and that is to be done by the trial court after the the parties are given opportunity to lead evidence in support of their respective case.

11. In the case of Rajeev Kourav v. Baisahab, (2020) 3 SCC 317, the Hon'ble Supreme Court has held that:-

"It is no more res integra that exercise of power under Section 482 CrPC to quash a criminal proceeding is only when an allegation made in the FIR or the charge sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of process of any Court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the Court, except in very exceptional circumstances,

at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding."

12. Therefore, while deciding an application under Section 482 Cr.P.C, for quashing of criminal case, this court has to examine the prosecution case only to ascertain as to whether the case for trial of the accused person is made out or not and the defense of the accused cannot be taken into consideration at this stage.

13. In the present case, the allegation is of hailing another country and raising slogans against our nation, and of abusing and threatening the persons present in religious preaching. In these circumstances, the allegations against the applicants clearly make out a case of trial of the applicants.

14. The application being without of merit and substance, is hereby rejected.

(Subhash Vidyarthi, J.)

Order Date :- 15.3.2024
prateek