

Court No. - 79**Case :- APPLICATION U/S 482 No. - 3804 of 2024****Applicant :- Ajai Rai And 4 Others****Opposite Party :- State of U.P. and Another****Counsel for Applicant :- Praveen Kumar Singh****Counsel for Opposite Party :- Aushim Luthra,G.A.****Hon'ble Sanjay Kumar Singh,J.**

1. Heard Mr. Praveen Kumar Singh, learned counsel for the applicants, Mr. P.C. Srivastava, learned Additional Advocate General, assisted by Mr. J.K. Upadhyay, learned Additional Government Advocate representing the State, Mr. Aushim Luthra, learned counsel for the first informant and perused the record.

2. Instant application under Section 482 Cr.P.C. has been preferred by the applicants, namely, Ajai Rai, Santosh Rai, Chandra Bhushan Rai, Salil Dubey and Vijay Guru @ Vijay Kumar Pandey with a prayer to quash the proceedings of Special Trial No. 7 of 2012 (State Vs. Ajai Rai and others) arising out of Case Crime No. 76 of 2010, under Sections 147, 148, 448, 511, 323, 504, 506, 120B IPC, Section 7 of Criminal Law Amendment Act and Section 3(1) of U.P. Gangster and Anti Social Activities (Prevention) Act, Police Station Chetganj, District Varanasi pending in the Court of Special Judge (Prevention of Corruption Act), Court No. 1, Varanasi.

3. Brief facts of the case which are required to be stated are that in this case, first information report was lodged on 26.03.2010 by opposite party no. 2 against six persons, namely, Sanjay Singh, Santosh Rai, Vijay Guru, Chandra Bhushan Rai, Salil Dubey and Ajai Rai, which was registered at Case Crime No. 76 of 2010 for the alleged offence under Sections 147, 148, 323, 504, 506 IPC, police station Chetganj, district Varanasi. After culmination of investigation, charge-sheet dated 28.10.2011 has been submitted against all the

named accused persons for the offence under Sections 147, 148, 448, 511, 323, 504, 506, 120B IPC, Section 7 Criminal Law (Amendment) Act and Section 3(1) of U.P. Gangster and Anti Social Activities (Prevention) Act, on which, concerned Court took cognizance on 28.01.2012. After framing of charge, trial proceeded against the accused persons. Thereafter, applicant no. 1 moved an application under Section 311 Cr.P.C. to recall PW-1 Bhanu Pratap Singh (complainant), which was rejected by the Trial Court vide order dated 15.10.2022, was challenged by the applicant no. 1 before this Court by means of an Application under Section 482 Cr.P.C. No. 38414 of 2022, which came to be dismissed vide order dated 20.01.2023. Thereafter, another Application under Section 482 Cr.P.C. No. 28102 of 2023 was filed by all the applicants with the prayer to quash the entire proceedings of Special Trial No. 7 of 2012 (State Vs. Ajai Rai and others) arising out of Case Crime No. 76 of 2010, under Sections 147, 148, 448, 511, 323, 504, 506, 120B IPC, Section 7 of Criminal Law Amendment Act and Section 3(1) of U.P. Gangsters and Anti Social Activities (Prevention) Act, P.S. Chetganj, District Varanasi pending in the Court of Special Judge (Prevention of Corruption Act), Court No. 1, Varanasi, wherein addition of Section 3(1) of U.P. Gangster and Anti Social Activities (Prevention) Act was also challenged. The said Application under Section 482 Cr.P.C. No. 28102 of 2023 was also dismissed vide order dated 21.11.2023. As such, trial proceeded and by 11.03.2024, statements of 11 prosecution witnesses including complainant (PW-1) have been recorded and at present, the trial of the applicants is at the advance stage of defence evidence as pointed out by learned counsel representing the State.

4. Main substratum of argument of learned counsel for the applicants is that during examination of prosecution witnesses, the applicants and complainant (opposite party no. 2) entered into compromise on 28.09.2023 and on the basis of said compromise,

the instant Application under Section 482 Cr.P.C. has been preferred by the applicants to quash the further proceeding of the aforesaid Session Trial No. 7 of 2012. It is further submitted that since matter has been compromised between the applicants and complainant (PW-1) with regard to offences under IPC, therefore, further proceeding under Section 7 Criminal Law (Amendment) Act and under Section 3(1) of U.P. Gangster and Anti Social Activities (Prevention) Act are also liable to be quashed. So far as criminal history of applicant no. 1 Ajai Rai is concerned, learned counsel for the applicants submitted that applicant no. 1 has criminal history of 19 cases including the present case, which are mentioned herein below :-

Sl. No.	Case Crime No.	Sections	Police Station	District
1.	350 of 1989	323, 504, 506 IPC	Cantt.	Varanasi
2.	424 of 1991	147, 148, 149, 307, 302 IPC	Cantt.	Varanasi
3.	118 of 1994	3(1) U.P. Gangster Act	Mughal Sarai	Chandauli
4.	167 of 2009	1539(k) IPC	Shivpur	Varanasi
5.	427 of 2009	147, 188, 332, 353, 504, 506 IPC	Phoolpur	Varanasi
6.	76 of 2010	48, 323, 504, 506, 120B IPC, 7 CLA Act and Section 7 Gangster Act	Chetganj	Varanasi
7.	168 of 2010	147, 452, 323, 504, 506, 120B IPC	Kotwali	Varanasi
8.	236 of 2010	149, 353, 342, 188, 504, 506, 332, 225 IPC and 7 CLA ACT	Chetganj	Varanasi
9.	527 of 2011	147, 148, 149, 323, 504, 50, 307 IPC	Chunar	Mirzapur
10.	86 of 2015	147, 148, 149, 323, 333, 336, 352, 307, 395, 397, 435, 436, 427, 188, 34 IPC, 7 CLA Act and Section 3, 4 Prevention of Damage to Public Property Act	Dashashwa-medh	Varanasi
11.	91 of 2015	3(2) NSA	Dashashwa-medh	Varanasi
12.	96 of 2017	171(h), 188 IPC	Badagaon	Varanasi
13.	190 of 2017	188 IPC	Chetganj	Varanasi
14.	193 of 2017	188 IPC	Kotwali	Varanasi
15.	278 of 2017	188 IPC	Chetganj	Varanasi
16.	76 of 2020	269/270 IPC	Kotwali	Varanasi
17.	83 of 2020	269, 270 IPC	Kotwali	Varanasi
18.	147 of 2020	269, 270 IPC and Disaster Management Act	Jaitpura,	Varanasi

19.	421 of 2020	15(4) Epidemic Diseases Act and 51 Disaster Management Act	Sigra	Varanasi
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5. On the other hand, Mr. P.C. Srivastava, learned Additional Advocate General representing the State vehemently opposed the prayer of the applicants by contending that first time, examination-in-chief of the complainant/PW-1 was recorded on 27.11.2014 and it was concluded on 01.12.2014. Thereafter, cross-examination of the said witness was started on 01.12.2014 and the same was concluded after six years and nine months on 06.09.2021. It is next submitted that apart from the offences under IPC, the applicants are also facing trial under Section 7 Criminal Law (Amendment) Act and under Section 3(1) of U.P. Gangster and Anti Social Activities (Prevention) Act, which are non-compoundable offences, therefore, no compromise can be made for the offences under Section 7 Criminal Law (Amendment) Act and U.P. Gangster and Anti Social Activities (Prevention) Act. He has also pointed out that applicant no. 1 Ajay Rai, who is an ex-MLA, is having a long criminal history of following 27 cases including the present case :

Sl. No.	Case Crime No.	Sections	Police Station	District
1.	0359 of 1986	147, 149, 307 IPC	Sigra	Commissionerate Varanasi
2.	0350 of 1989	323, 504, 506 IPC	Cantt.	Commissionerate Varanasi
3.	0424 of 1991	147, 148, 149, 307, 302 IPC	Cantt.	Commissionerate Varanasi
4.	0087 of 1996	3/4 Gunda Act	Chetganj	Commissionerate Varanasi
5.	0169 of 2004	147, 148, 149, 323, 332, 342, 452, 504, 506 IPC	Chetganj	Commissionerate Varanasi
6.	0237 of 2006	147, 148, 149, 307, 323, 427, 436, 452, 504, 506 IPC	Chetganj	Commissionerate Varanasi
7.	0197 of 2007	143, 332, 342, 353, 504, 506 IPC and 7 CLA Act	Chetganj	Commissionerate Varanasi
8.	0167 of 2009	153A IPC	Shivpur	Commissionerate Varanasi
9.	0427 of 2009	7 CLA Act, 147, 188, 332, 341, 353, 504, 506 IPC	Phoolpur	Commissionerate Varanasi

10.	0076 of 2010	7 CLA Act, 120B, 147, 148, 323, 504, 506 IPC	Chetganj	Commissionerate Varanasi
11.	0168 of 2010	147, 452, 323, 504, 506, 120B IPC	Kotwali	Commissionerate Varanasi
12.	0236 of 2010	7 CLA Act, 143, 149, 188, 225, 332, 342, 353, 504, 506 IPC	Chetganj	Commissionerate Varanasi
13.	0210 of 2013	147, 148, 149, 342, 323, 504, 506, 394, 120B IPC	Chetganj	Commissionerate Varanasi
14.	0086 of 2015	7 CLA, 147, 148, 149, 332, 333, 353, 307, 395, 397, 435, 436, 427, 188, 34 IPC, 3/4 Prevention Of Damage To Public Property Act	Dashashwa-medh	Commissionerate Varanasi
15.	0091 of 2015	3(2) NSA	Dashashwa-medh	Commissionerate Varanasi
16.	0096 of 2017	171H/188 IPC	Badagaon	Commissionerate Varanasi
17.	0190 of 2017	188 IPC	Chetganj	Commissionerate Varanasi
18.	0193 of 2017	188 IPC	Kotwali	Commissionerate Varanasi
19.	278 of 2017	188 IPC	Chetganj	Commissionerate Varanasi
20.	0076 of 2020	269, 270 IPC	Kotwali	Commissionerate Varanasi
21.	0083 of 2020	269, 270 IPC	Kotwali	Commissionerate Varanasi
22.	0147 of 2020	269, 270 IPC and 51 Disaster Management Act	Jaitpura	Commissionerate Varanasi
23.	421 of 2020	143, 145, 269, 270 IPC	Sigra	Commissionerate Varanasi
24.	454 of 2021	143, 145, 149, 188, 283, 341 IPC	Sigra	Commissionerate Varanasi
25.	0056 of 2022	124A, 153, 153A, 188, 269 IPC	Phoolpur	Commissionerate Varanasi
26.	0046 of 2023	500, 501, 505(2) IPC	Phoolpur	Commissionerate Varanasi
27.	0449 of 2023	505(2) IPC	Lanka	Commissionerate Varanasi

6. Having heard the submissions of learned counsel for the parties and perusing the record, I find that in view of the judgment of the Division Bench of this Court passed in Criminal Misc. Writ Petition No. 10708 of 2023, the offence under the U.P. Gangster and Anti Social Activities (Prevention) Act, 1986 can be added during investigation. It is not in dispute that issue of addition of Section 3(1) of U.P. Gangster and Anti Social Activities (Prevention) Act

during the course of investigation and the impugned charge-sheet dated 28.10.2011 have already been challenged by the applicants before this Court by means of an Application under Section 482 Cr.P.C. No. 28102 of 2023, which was dismissed vide order dated 21.11.2023. The trial is at the advance stage as noted above. So far as alleged compromise between the applicants and complainant for the offence under IPC is concerned, it is not in dispute that U.P. Gangster and Anti Social Activities (Prevention) Act is a special Act. The offence punishable under the U.P. Gangster and Anti Social Activities (Prevention) Act is an independent offence and it was not imposed at the instance of the complainant but it has been imposed by the State Government to achieve the aim and object of the said Act and it is also not in dispute that it is a State case, therefore, it is the State, who has to contest and prosecute the accused persons for the offences under U.P. Gangster and Anti Social Activities (Prevention) Act. No compromise with regard to offence under Section 3(1) U.P. Gangster Act between the applicants and State can take place. There is no statutory basis to quash the proceedings under Section 7 Criminal Law (Amendment) Act and Section 3(1) U.P. Gangster Act even after compromise between the complainant and accused-applicants for the offence under IPC. The compromise in part is not permissible.

7. In view of the above, considering the facts and circumstances of the case in totality, I do not find any statutory/good ground to quash the aforesaid proceeding against the applicants on the basis of alleged compromise with regard to offence under IPC only as noted above.

8. The application lacks merit and is, accordingly, dismissed.

Order Date :- 25.4.2024

Shubham