

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____ OF 2024
[ARISING OUT OF SPECIAL LEAVE PETITION (CRL.) NO.12354/2024]

MUKESH & ORS.

APPELLANT(S)

VERSUS

THE STATE OF UTTAR PRADESH & ORS.

RESPONDENT(S)

O R D E R

1. Leave granted.
2. Heard learned counsel appearing for the appellants and learned counsel appearing for the State.
3. None appears for the first informant.
4. The appellants filed a petition before the High Court of Allahabad praying for quashing the criminal proceedings. The prayer in the writ petition was for quashing the First Information Report (FIR) filed at the instance of the fourth respondent for the offences punishable under Sections 420, 467, 468, 470, 477, 448, 427 and 120B of the Indian Penal Code, 1860.
5. By the impugned order dated 8th May, 2024, which is a one line order, the High Court dismissed the writ petition

on the statement of the first informant that a charge-sheet has been filed. We are surprised to note that without considering the case of the appellants on merits, the petition has been dismissed as infructuous. We fail to understand how a petition for quashing criminal proceedings becomes infructuous on the ground of filing of a charge-sheet. Only on this ground itself, the impugned order deserves to be set aside.

6. Learned counsel representing the State of Uttar Pradesh submits that the High Court order does not call for interference as the appellants have an efficacious remedy to challenge the order framing charge by filing a revision application. We are shocked to note the approach adopted by the State Government. What is suggested by the State Government is that once charge-sheet is filed, accused cannot do anything except to wait till the charge is framed and thereafter, can file a revision application to challenge the order of framing charge.

7. At this stage, learned counsel appearing for the State submits that possibly because a remedy of filing revision application against the order framing charge was available, the High Court has dismissed the petition. We do not see any such reason forthcoming from the impugned order as the petition is dismissed as infructuous without mentioning how

it has become infructuous.

8. It is true that the appellants can apply for discharge. However, the scope of application for discharge is completely different from the scope of a petition for quashing the criminal proceedings. While arguing a case for discharge, the appellants will not be in a position to rely upon any document which is not the part of charge sheet. The ground of abuse of process of law will not be available while arguing discharge application. However, in a petition for quashing either under Section 482 of the Code of Criminal Procedure, 1973 or under Article 226 of the Constitution of India, a wider challenge is available including a challenge on the ground of abuse of process of law. In such proceedings, the accused can rely upon documents which are not the part of the charge-sheet. Therefore, we reject the submission made by learned counsel appearing for the State. Though the submissions made on behalf of the State have no basis, we have dealt with the same elaborately to ensure that the same are not urged in a similar case.

9. As merits of petition for quashing have not been gone into, we set aside the impugned order and restore the Criminal Miscellaneous Writ Petition No.5221 of 2022. The restored writ petition shall be listed before the Roster

Bench of the High court of Judicature at Allahabad on 6th January, 2025 when parties who are present today shall appear without waiting for the service of notice.

10. All contentions between the parties are left open to be decided by the High Court.

11. Till further orders are passed by the High Court, the trial shall not proceed.

12. The appeal is accordingly allowed.

13. Pending application(s), if any, shall stand disposed of.

.....J.
(ABHAY S.OKA)

.....J.
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
NOVEMBER 29, 2024.

ITEM NO.40

COURT NO.5

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (Crl.) No.12354/2024

[Arising out of impugned final judgment and order dated 08-05-2024 in CRMWP No. 5221/2022 passed by the High Court of Judicature at Allahabad]

MUKESH & ORS.

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH & ORS.

Respondent(s)

Date : 29-11-2024 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

For Petitioner(s) Mr. Raghvendra Upadhyay, Adv.
Mrs. Purnima Jain, Adv.
Mr. Vaibhav Tripathi, Adv.
Mr. Awadhesh Kumar, Adv.
Mr. Chandra Kishore Yadav, Adv.
Mr. Kisalaya Shukla, AOR

For Respondent(s) Dr. Vijendra Singh, AOR
Ms. Preeti Goel, Adv.
Mr. Abhinav Rathi, Adv.
Ms. Apurva Singh, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed
of.

(KAVITA PAHUJA)
AR-cum-PS

(AVGV RAMU)
COURT MASTER (NSH)

[Signed order is placed on the file]