

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:4377

Court No. - 27

Case :- APPLICATION U/S 482 No. - 11379 of 2023

Applicant :- Keshav Ugan Jha

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

Counsel for Applicant :- Ravindra Kumar Yadav,Ajeet Singh

Counsel for Opposite Party :- G.A.,Mrs.Suniti Sachan

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Ravindra Kumar Yadav, the learned counsel for the applicant, Sri Akhilesh Kumar Vyas, the learned A.G.A. appearing on behalf of the State and Ms. Suniti Sachan, the learned counsel for the opposite party no.2/informant.

2. The instant application under Section 482 Cr.P.C. has been filed by the applicant seeking quashing of the impugned charge sheet no.1/2023 dated 16.05.2023, summoning order dated 25.05.2023 including the entire proceedings of Case No.59497 of 2023: State Vs. Keshav Ugan Jha, arising out of Case Crime No.0047 of 2023, under Sections 409, 420, 504, 506 I.P.C. Police Station Vibhuti Khand, District Lucknow pending in the Court of District & Sessions Judge, Lucknow.

3. The opposite party no.2 had lodged an F.I.R. on 24.01.2023 against the applicant and one Desh Dipak Azad, alleging that the informant's company Fuzenite Infratel Pvt. Ltd. had received an order to supply TMT bars (iron bars) to a construction company and he had in turn placed order upon Keshav Enterprises, a company based at Pune and owned by the applicant, through the co-accused Desh Dipak Azad. The informant had paid fifty percent of the sale consideration amounting to Rs.40,00,000/- on 28.12.2022 and the material was to be delivered within four days, but when the material was not delivered

and the informant repetitively contacted the supplier, he insisted for payment of balance amount also, whereupon the informant paid Rs.18,00,000/- more through RTGS on 07.01.2023. The F.I.R. alleges that when the informant repetitively asked for refund of the amount merely Rs.20,00,000/- were repaid and the balance amount of Rs.38,00,000/- has not been repaid and therefore it appears that the accused persons had cheated the informant.

4. After investigation a charge sheet was submitted on 16.05.2023 alleging commission of offences under Sections 409, 420, 504, 506 I.P.C and the learned trial court has taken cognizance of the offence by means of an order dated 25.05.2023.

5. The applicant has sought quashing of the proceedings on the ground that the allegations levelled in the F.I.R. are false and the learned counsel for the applicant has submitted that the dispute between the parties is regarding non-payment of money paid under a contract, which is purely a civil dispute.

6. Per contra, the learned A.G.A. and learned counsel for the informant have submitted that although the allegations give rise to a civil dispute but it is not that the allegations do not make out commission of a cognizable offence by the applicant.

7. The allegations levelled in the F.I.R. clearly make out a case of cognizable offences by the applicant. The mere fact that the allegations also make out existence of civil dispute would not be a ground to quash the criminal proceedings when the allegations clearly make out commission of cognizable offences by the applicant. The correctness of allegations will be examined by the learned trial court after giving an opportunity to the parties to lead evidence.

8. In **State of Haryana versus Bhajan Lal**, (1992) Supp 1 SCC 335, the Hon'ble Supreme Court discussed the law relating to exercise of exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code, and gave 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 was clarified that 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.

9. After mentioning the aforesaid categories, the Hon'ble Supreme Court added 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 **CBI versus Aryan Singh**, 2023 SCC OnLine SC 379, the Hon'ble Supreme Court held that: -

“10. From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr. P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation

against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr. P.C., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not”.

11. Therefore, the submission of the learned Counsel for the applicant that the allegations leveled in the FIR are false, cannot be examined by this Court while deciding an application under Section 482 Cr.P.C.

12. So far as the next submission of the learned Counsel for the applicant, that the dispute between the parties is purely civil in nature, the allegations in the FIR are that the applicant has committed the offences of criminal breach of trust and cheating against the informant.

13. In **Pratibha v. Rameshwari Devi**, (2007) 12 SCC 369, the Hon’ble Supreme Court held that *“it is well settled that criminal and civil proceedings are separate and independent and the pendency of a civil proceeding cannot bring to an end a criminal proceeding even if they arise out of the same set of facts.”*

14. In **Mahesh Chaudhary v. State of Rajasthan**, (2009) 4 SCC 439, the Hon’ble Supreme Court held that: -

11. The principle providing for exercise of the power by a High Court under Section 482 of the Code of Criminal Procedure to quash a criminal proceeding is well known. The Court shall ordinarily exercise the said jurisdiction, inter alia, in the event the allegations contained in the FIR or the complaint petition even if on face value are taken to be correct in their entirety, does not disclose commission of an offence.

*12. It is also well settled that save and except in very exceptional circumstances, the Court would not look to any document relied upon by the accused in support of his defence. **Although allegations contained in the complaint***

petition may disclose a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue. For the purpose of exercising its jurisdiction, the superior courts are also required to consider as to whether the allegations made in the FIR or the complaint petition fulfil the ingredients of the offences alleged against the accused.

(Emphasis supplied)

15. In **Priti Saraf v. State (NCT of Delhi)**, (2021) 16 SCC 142, it was held that: -

31. In the instant case, on a careful reading of the complaint/FIR/charge-sheet, in our view, it cannot be said that the complaint does not disclose the commission of an offence. The ingredients of the offences under Sections 406 and 420IPC cannot be said to be absent on the basis of the allegations in the complaint/FIR/charge-sheet. We would like to add that whether the allegations in the complaint are otherwise correct or not, has to be decided on the basis of the evidence to be led during the course of trial. Simply because there is a remedy provided for breach of contract or arbitral proceedings initiated at the instance of the appellants, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy, and the initiation of criminal proceedings, in any manner, will be an abuse of the process of the court for exercising inherent powers of the High Court under Section 482CrPC for quashing such proceedings.”

16. As besides the civil dispute between the parties, the allegations in the FIR make out commission of cognizable offences of criminal breach of trust and cheating by the applicant, which allegations have been established by the material collected during investigation and, accordingly, a charge-sheet has been filed against the applicant, I am of the considered view that as per the law laid down by the Hon'ble Supreme Court in **Pratibha, Mahesh Chaudhary and Priti Saraf** (Supra), the charge-sheet and the criminal proceedings against the applicant cannot be quashed merely because the allegations may also disclose a civil dispute between the parties.

17. In view of the aforesaid discussion, there appears to be no illegality in the charge-sheet or the impugned summoning order dated 25.05.2023.

18. The application under Section 482 Cr.P.C. lacks merit and the same is **dismissed**.

(Subhash Vidyarthi, J.)

Order Date :- 16.1.2024

Ram.