

(2023) 05 SHI CK 0089
In the High Court Of Himachal Pradesh
Case No : CR.MMO No. 95 Of 2021

Mahinder Kumar @ Kalu And Others

APPELLANT

Vs

State Of H.P. And Others

RESPONDENT

Date of Decision : 18-05-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 147, 148, 149, 269, 323, 329, 386, 406, 451, 504, 506, 509
Code Of Criminal Procedure, 1973 — Section 173, 173(2), 482

Citation : (2023) 05 SHI CK 0089

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Parveen Chauhan, Raj Kumar Negi, Ranjana Patial, Sat Prakash

Final Decision : Dismissed

Judgement

Satyen Vaidya, J

1. By way of instant petition, petitioners have prayed for quashing of FIR No.143 of 2020, dated 01.05.2020 under Sections 451, 323, 504, 506, 509, 269 and 34 of IPC, registered at Police Station, Chamba alongwith consequential criminal proceedings arising therefrom.

2. It is averred in the petition that no prima facie case is made out from the bare reading of FIR No.143 of 2020. In Fact, FIR No. 143 of 2020 was nothing, but a counter-blast to FIR No. 140 of 2020 registered against respondents No. 2 and 3 on 30.4.2020 at the instance of petitioner No.1. It is further submitted that there is a pending civil litigation between the parties and respondent No.2 has reported a false case against petitioners with ulterior purposes.

3. Respondent No.1/State has filed reply and has contested the averments made in the petition being wrong and incorrect. It is submitted that the investigation was carried after registration of FIR No. 143 of 2020. Sufficient evidence was found against the petitioners and the report under Section 173(2) Cr.P.C. has

been submitted in the court of competent jurisdiction, where the petitioners are facing trial.

4. During the course of hearing, learned counsel for respondents No. 2 and 3 also apprised the Court that the charges have already been framed against the petitioners by learned trial Court and trial has commenced.

5. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

6. Petitioners have approached this Court by way of instant petition at a stage when report under Section 173 (2) Cr.P.C. had already been submitted. Except for a copy of FIR No. 143 of 2020, no other record pertaining to investigation and report under Section 173 Cr.P.C. has been filed. Learned counsel for the petitioners has also not been able to rebut the fact disclosed by learned counsel for respondents No. 2 and 3 that charges have already been framed against the petitioners.

7. Defining the contours of the jurisdiction of this Court under Section 482 Cr.P.C; in the cases where the investigating agency after completion of investigation has submitted the report under Section 173 (2) Cr.P.C; Hon'ble Supreme Court in Kaptan Singh vs. State of Uttar Pradesh and others (2021) 9 SCC 35 has held as under:

9.1 At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 Cr.P.C. has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 Cr.P.C. quashed the criminal proceedings, by the time the Investigating Officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the Learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition under Section 482 Cr.P.C. was at the stage of FIR in that case the allegations in the FIR/Complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the

appellate jurisdiction and/or conducting the trial. As held by this Court in the case of Dineshbhai Chandubhai Patel, (2018) 3 SCC 104 in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the Investigating agency nor can exercise the powers like an Appellate Court. It is further observed and held that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the Investigating Authority at such stage to probe and then of the Court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

9.2 In the case of Dhruvaram Murlidhar Sonar vs. State of Maharashtra (2019) 18 SCC 191 after considering the decisions of this Court in State of Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 335, it is held by this Court that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 Cr.P.C. though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 Cr.P.C. Similar view has been expressed by this Court in the case of CBI vs. Arvind Khanna (2019) 10 SCC 686, State of Telangana vs. Managipet (2019) 19 SCC 87 and in XYZ vs. State of Gujarat (2019) 10 SCC 337.

8. In absence of material collected by investigating agency and the contents of report under section 173 Cr.P.C, this court is not in position to examine the relevant material at the touch stone of above noted exposition made in Kaptan Singh supra. The position becomes grimmer for petitioners after the framing of charge against them. Petitioners have not even laid any challenge to the charges so framed against them.

9. Learned counsel for the petitioners has tried to draw advantage from the following observations made by the Hon'ble Supreme Court in para 18 of the judgment passed in the case of Shafiya Khan alias Shakuntala Prajapati vs. State of Uttar Pradesh and another (2022) 4 SCC 549, which reads as under:

"18. Although it is true that it was not open for the Court to embark upon any enquiry as to the reliability or genuineness of the allegations made in the FIR, but at least there has to be some factual supporting material for what has been alleged in the FIR which is completely missing in the present case and documentary evidence on record clearly supports that her Nikah Nama was duly registered and issued by competent authority and even the charge sheet filed against her does not prima facie disclose how the marriage certificate was forged."

10. Petitioners, in my considered view, cannot derive any benefit from the aforesaid observations made in Shafiya Khan's case for the reasons firstly that such observations were made in peculiar facts of that case and secondly, petitioners have neither laid challenge to the report under Section 173 Cr.P.C nor to the cognizance and charge orders passed by learned trial court.

11. In result, the petition fails and the same is accordingly dismissed, so also the pending miscellaneous application(s) if any.