
(2013) 05 AHC CK 0138
In the Allahabad High Court
Case No : Criminal M.A. No. 28629 of 2012

R.S. Dwivedi and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 01-05-2013

Acts Referred:

Citation : (2013) 2 ACR 2187

Hon'ble Judges : Ramesh Sinha, J

Bench : Single Bench

Advocate : Gopal Mishra and Viresh Mishra, for the Appellant; Inder Pal Singh (Party-in-Person), for the Respondent

Final Decision : Dismissed

Judgement

Ramesh Sinha, J.—This application u/s 482, Cr.P.C. has been filed with a prayer to quash the impugned summoning order dated 22.8.2012 passed by A.C.J.M.-II, Allahabad in Case No. 2894 of 2012, State v. R.S. Dwivedi and others, and stay the effect and operation of the charge-sheet dated 17.6.2012 in Case No. 2894/12 vide Case Crime No. 194/07, under Sections 147, 323, 504, 506 and 341, I.P.C., P.S. Industrial Area, Allahabad (State v. R.S. Dwivedi and others), pending in the court of A.C.J.M.-II Allahabad and also further proceeding in Case No. 2894 of 2012, State v. R.S. Dwivedi and others, pending in the Court of A.C.J.M.-II, Allahabad. The prosecution story as stated in the F.I.R. which was lodged by the complainant/opposite party No. 2 Indrapal Singh (hereinafter referred to as the complainant) against the applicants and two other accused persons namely R.C. Yadav and R.B. Singh who were the Security Guards posted at the Officer's Club at I.T.I., Naini, Allahabad with respect to an incident which is said to have taken place on 14.7.2007 at the Officers Club, where a cultural programme and a dinner was organized by the Club and the complainant alongwith his family members were also going to attend the said cultural programme. At the gate of the club, the applicants R.S. Dwivedi and S.K. Ghosh and Narendra Prakash who were working at the I.T.I. Limited, Naini, Allahabad

alongwith the Security Guards named above armed with guns, stopped the complainant, his wife and son from entering into the Club and misbehaved with them by abusing and manhandling. The complainant inquired from the said persons as they had been invited in the said function then why such behaviour against them on which the Security Guards R.C. Yadav and R.B. Singh had, raised the gun on the complainant and threatened them to leave the place or they will be done to death. The complainant and his family members were manhandled, insulted and were forced to go back and were not allowed to enter the Officers Club or to participate in the programme though they had also right to enter the Club and participate in the said programme. Sri A.K. Agarwal and Ashok Srivastava who were present at the gate of the Club inquired about the reason the complainant and his family members who were the members of the said club were not allowed to enter in the club but no heed was paid to them also. The complainant and his family members were humiliated by the accused persons and threatened for dire consequences due to which the family members of the complainant and his children were under a state of fear. The complainant approached the concerned Police Station for lodging an F.I.R. against the accused persons.

2. The F.I.R. of the complainant was registered on 14.9.2007 as Case Crime No. 194 of 2007 under Sections 147, 323, 504, 506 and 341, I.P.C., P.S. Industrial Area, Allahabad against five accused persons including the applicants. The investigation was carried out and the charge-sheet was submitted against accused persons.

3. On 17.6.2012, cognizance of the offence was taken by the learned Magistrate on 22.8.2012 which was registered as Case No. 2894 of 2012 under Sections 147, 323, 504, 506 and 341, I.P.C.

4. The applicants have been summoned on 22.8.2012 by the Addl. Chief Judicial Magistrate, Court No. 2, Allahabad for facing trial in the aforesaid offence against which they have approached this Court challenging the impugned charge-sheet as well as the summoning order passed against them.

5. Heard Sri Viresh Mishra, learned senior advocate, assisted by Sri Gopal Mishra, learned counsel for the applicants, Indrapal Singh, appearing in person as opposite party No. 2 and learned A.G.A.

6. It has been submitted by learned counsel for the applicants that the applicant No. 1 was working as Chief Manager (H.R.) E.R. I.T.I. Ltd., Naini, Allahabad and applicant No. 2 working also on the date of incident at the said unit and at present he is working as Chief Manager (H.R.) I.T.I. Ltd., Mankapur. The applicant No. 3 has retired after attaining the age of superannuation from the post of Addl. General Manager, Naini Unit.

7. It is further submitted that the opposite party No. 2 was working in the I.T.I., Mankapur, district Gonda as technician and he was quarrelsome employee of the unit. There was dispute between him and the Management of the Mankapur Unit

and several civil and criminal cases were going on between them in different court of law and disciplinary proceedings were initiated against him by Mankapur Unit during his tenure. Copy of the chart showing the criminal cases filed against complainant have been annexed as Annexure-2 to the accompanying affidavit. Due to dispute between the Management of the Mankapur Unit and the complainant a settlement arrived between them in order to end the dispute. On 11.9.1998, the complainant moved an application to the competent authority of the Mankapur Unit, Gonda and submitted his unconditional apology for withdrawing the civil and criminal cases and compromised the dispute with the Management. Copy of the application dated 11.1.1998 has been annexed as Annexure-3 to the accompanying affidavit. The dispute between the management of the Mankapur Unit and the management was compromised on 11.1.1998 before the Conciliation Officer, Labour Office, Gonda, Copy of the same have been annexed as Annexure-4 to the accompanying affidavit. After the compromise between the management of Mankapur Unit and the complainant, the complainant was reinstated in service and he was transferred from the said unit to Naini Unit, at Allahabad.

8. It was further argued that after Joining the Naini Unit, the complainant remained quite for some time and started working at the unit but he again started showing his conduct and quarrelsome behaviour in the Naini Unit. On 2.6.2007, the complainant misbehaved with the officers of Naini Unit and also left the premises of the Company without any proper permission of the competent authority and treating the matter to be serious, he was suspended by the Chief Manager (H.R.) of the Naini Unit on 11.6.2007. Thereafter, a charge-sheet was served to him on 16.6.2007, Copy of the same has been collectively annexed as Annexure-5 to the accompanying affidavit.

9. It was urged that as the applicant was suspended by the competent authority of the company, he concocted a false story that the applicants have misbehaved with him and moved an application on 23.7.2007 on false, frivolous allegations where he only named the two Security Guards of the Company and in a subsequent complaint on 7.8.2007, he has given the name of all the applicants for the incident dated 14.7.2007 which has taken place at the Officers Club of the Company. Before lodging the present F.I.R., the complainant has also moved application u/s 156(3), Cr.P.C. Application before the A.C.J.M. IInd, Allahabad for directing the concerned police station to register the case against the applicants under Sections 323, 504, 506 and 341, I.P.C. which was dismissed on 24.8.2007 on the basis of police report submitted on the said application.

10. Aggrieved by the order dated 24.8.2007 by which the complainants application u/s 156(3), Cr.P.C. was dismissed, the complainant filed criminal misc. application No. 23148 of 2007 which was dismissed as withdrawn on 18.9.2007 on the ground that an F.I.R. has already been lodged of the incident dated 14.7.2007 on 14.9.2007.

11. Thereafter, the applicants approached this Court and filed Criminal Misc. Writ

Petition No. 14862 of 2007 challenging the F.I.R. dated 14.9.2007 numbered as case crime No. 194 of 2007 under Sections 147, 323, 504, 506 and 341, I.P.C., P.S. Industrial Area. Allahabad. After hearing counsels for the parties including the complainant the arrest of the applicants was stayed by this Court on 3.10.2007. Indrapal Singh who was the Investigating Officer of the case submitted charge-sheet against the applicants on 15.10.2007 and submitted the same to the Circle Officer for being forwarded to the court concerned but the said charge-sheet was not submitted to the court concerned and further investigation was ordered.

12. On 13.3.2008, final report was submitted being F.R. No. 5 of 2008 before the court below on the ground that the allegations levelled in the F.I.R. were false and concocted and further proceedings u/s 182, I.P.C. was also referred by the Investigating Officer to be launched against the complainant, copy of the same has been annexed as Annexure-11 to the accompanying affidavit.

13. It is further submitted by the counsel for the applicant that the Management finally terminated the services of the complainant on 3.1.2009. After dismissal of the complainant from his service, there are 43 cases between the complainant and the management of the Company which are either pending or disposed of, copy of the same has been annexed as Annexure-13 to the accompanying affidavit.

14. The complainant filed protest petition and the final report was rejected by the Addl. Chief Judicial Magistrate on 23.10.2009 and directed the Police to further investigate the matter, copy of the same has been annexed as Annexure-15 to the accompanying affidavit. In pursuance to the directions of the Addl. Chief Judicial Magistrate, the police investigated the matter and two Investigating Officers have investigated the case and ultimately came to the conclusion that no offence whatsoever is made out against the applicants, copy of the Final Report has been annexed as Annexure-16 to the accompanying affidavit.

15. It was pointed out by the counsel for the complainant that the complainant had filed Criminal Misc. Writ Petition No. 4456 of 2010 before this Court for taking cognizance of the offence on the charge-sheet on 15.10.2007 which was not filed in the court below and the said writ petition was dismissed by this Court on 10.1.2011, copy of which has been annexed as Annexure-17 to the accompanying affidavit. The protest petition filed by the complainant was allowed by the Addl. Chief Judicial Magistrate vide order dated 16.2.2012 who directed the further investigation in the matter and the applicant again approached this Court by filing Criminal Misc. Application No. 9303 of 2012 in which an interim order was passed on 20.3.2012 that no coercive action shall be taken against the applicants in case crime No. 194 of 2007 under Sections 147, 323, 504, 506 and 341, I.P.C. and charge-sheet submitted on 17.6.2012 and the learned Magistrate took cognizance on 22.8.2012, copy of the same has been annexed as Annexure-20 to the accompanying affidavit.

16. It was vehemently argued by learned counsel for the applicant that as the earlier Investigating Officer have submitted final report against the applicants but ultimately charge-sheet was submitted against the applicants on 17.6.2012 and summoning order has been passed on 22.8.2012 by the learned Magistrate on the basis of the statement of the complainant, his wife, his daughter and son and two other retired employees of the company who are highly interested and partisan witness persons against the applicants, hence the order taking cognizance and the charge-sheet is liable to be quashed by this Court. The present case lodged by the complainant is malicious one as the complainant was initially suspended and ultimately terminated from his service. Hence he has lodged the malicious proceedings against the applicants who were higher officials of the company in order to pressurize the Management of the company to withdraw the cases against complainant as has been done by the Mankapur Unit, Gonda of the company who have withdrawn the cases against the applicant because of the frivolous litigations initiated by the complainant against the said unit of the Company. He further submitted that cognizance taken by the Magistrate of the incident dated 14.7.2007 on 22.8.2012 is barred by limitation as the cognizance have been taken after more than five years of the incident, hence the proceedings are liable to be quashed on this ground alone as the offence in question is punishable maximum for a period of three years and lastly no offence whatsoever is made out against the applicants.

17. Per-contra, the complainant Indrapal Singh appearing in person has vehemently opposed the arguments advanced by the learned counsel for the applicants and strongly denied all the allegations levelled against him by the applicants. He submitted that applicants have filed false affidavits and annexed forged documents before this Court at the time of hearing of Criminal Misc. Application No. 9303 of 2012 and obtained Interim order from this Court on 20.3.2012 and aforesaid petition was dismissed by this Court on merits on 23.2.2012, copy of the same has been annexed as C.A. 1 to the counter-affidavit. The applicants also made concealment of relevant facts and orders which were passed by this Hon'ble Court as well as Hon'ble Supreme Court regarding the present case registered as case crime No. 194 of 2007 under Sections 147, 323, 504, 506 and 341, I.P.C. knowingly and deliberately with oblique motive which is being quoted here below:

1. The applicants filed criminal writ petition No. 14862 of 2007 for quashing the F.I.R. crime No. 194 of 2007 under Sections 147, 323, 504, 506 and 341, I.P.C. lodged on 14.9.2007 by the opposite party No. 2. The said writ petition was dismissed by this Court on 10.3.2008 and also dismissed recall application which was submitted by the applicant.

2. The applicant filed criminal misc. application No. 9303 of 2012 u/s 482, Cr.P.C. against the order dated 16.2.2012 which was passed by the court concerned and the same was dismissed by this Hon'ble Court on 23.8.2012 after hearing both the parties and State of U.P.

3. The opposite party No. 2 filed criminal SLP No. 1101/2009 before the Hon''ble Supreme Court of India against order dated 14.10.2008 passed by this Hon''ble Court relates case crime No. 194/07 and charge-sheet dated 15.10.2007 and after hearing both parties the above SLP granted by Supreme Court of India and upheld the charge-sheet No. 100/07 dated 15.10.2007 which is made/prepared by the earlier Investigating Officer (Shri Inder Pal Singh) after proper investigation.

18. In support of his argument, he has placed reliance on the judgment of the Apex Court in *Bihari Kunj Sahkari Awas Samiti v. State of U.P. and others*, 2009 (2) ADJ 29 (SC) and drawn attention on para No. 13 of the said judgment.

19. He has further placed reliance on the judgment of the Apex Court in *Dhananjai Sharma v. State of Haryana*, 1995 (3) SCC 767, which is quoted here below:

The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of Judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the party concerned in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the act.

20. The complainant filed a detailed counter-affidavit showing the conduct of the officials of the company at the Mankapur Unit as well as the Naini Unit where the complainant was employed in order to show that the applicants and other officials of the company have been harassing the complainant and his family members and further they had tried to influence the Investigating agencies and got final report in the matter being an influential person and the complainant had made several complaints against officials of the company regarding the manner in which they were tempering with the investigation and ultimately the charge-sheet was submitted against the applicants for the offence in question and the cognizance taken by the learned Magistrate on the basis of evidence collected during investigation. The averments made by applicants in para Nos. 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 22, 23, 24, 25, 26 of the affidavit filed in support of 482, Cr.P.C. Application has been specifically denied by the complainant in the counter-affidavit in para Nos. 108, 109, 110, 111, 113, 114, 116, 117, 118, 119, 120, 121, 123, 124, 125, 128, 129, 130, 131 and 132 and for the sake of brevity, the said averments are not being repeated.

21. It is further submitted by the complainant that due to complaints against the officers including the applicants who were involved in embezzlement of money of

the employees of the company were annoyed with the complainant and in order to pressurize and victimize the complainant on the basis of the false and frivolous ante-dated concocted documents, complaints by unauthorized persons such as H.P. Chakraborty, the complainant was placed under suspension by the order dated 11.6.2007 and a false charge-sheet dated 16.6.2007 was issued by Sri Govind Singh Dwivedi. Senior Manager, Naini Unit without jurisdiction alongwith false, general and vague charges without being given opportunity of hearing to defend his case and without opportunity to led the evidence on the basis of the charge-sheet dated 16.6.2007.

22. It is further submitted by the complainant that the house No. B9, Officers Colony of I.T.I., Naini, Allahabad was allotted to the complainant vide order dated 30.12.2004 by the Company and since then being member of officers club, charge of Rs. 220 per month was deducted from his monthly salary. The officers club is run and managed by the money of the members of the club and also managed by the independent committee/body as Secretary and other members who are elected by the members of the club, copy of the same has been annexed as C.A. 18 to the counter-affidavit. The colony of I.T.I., Naini as well as other unit of the Company officers club have been made for recreational activities and functioning under the club executive body/club management. Member of these clubs are not available only to the employee of I.T.I., but also to outsiders who reside in the colony also members are leave to go on as well as to attend the various functions organized by the Club. The complainant was a member of officers club from 1.1.2005 to 4.8.2007 continuously and fee of membership of officers club of Rs. 220 per month was deducted from the monthly salary of the complainant regularly, copy of the same has been annexed as C-A-19 to the counter-affidavit.

23. It was argued by the complainant that the club at Allahabad had organized cultural programme of children followed by a dinner on 14.7.2007 and Sri Preetam Singh I.T.I. was the chief guest of the programme. The daughter of complainant namely Priyanka Singh was also taking part in the said programme and she was called by the ladies of club to participate in the programme and for the last 10 days, she was practicing for the said programme. It was then urged by the complainant that all the members of the club including the complainant were invited with their families vide circular dated 12.7.2007 which was issued by the then Secretary A.K. Agarwal of the Club. The complainant and his family members being members of the club were invited, copy of the circular has been annexed as C.A. 20 to the counter-affidavit. On 14.7.2007 at about 7 p.m., the complainant with his family members were going to the club of Naini Unit, Allahabad to attend the cultural programme and the dinner but at the gate of the club, the applicants including the other accused persons who were the security guards misbehaved with the complainant and his family members and on resistance, assaulted the complainant and his family members and threatened to kill them and they were restrained from entering into the officers club.

24. On 15.7.2007 at about 7.30 p.m., the complainant approached the Police Station Industrial Area, Allahabad for lodging the F.I.R. against the applicants and other accused persons and also gave written complaint about the said incident but the F.I.R. of the same was not lodged due to influence of the applicants who are higher officials of the H.R. Department and the Company of the Naini Unit, Allahabad, copy of the application has been annexed as C.A. 21 to the counter-affidavit. The complainant also moved an application on 16.7.2007 before the S.S.P., Allahabad through registered post and a similar application was also moved on 23.7.2007 to the Director General of Police, U.P., Lucknow through Registered Post for lodging the F.I.R. against the applicants. The complainant also submitted a representation on 7.8.2007 to C.M.D., I.T.I., Corporate Office, Bangalore and due to seriousness of the complaint, the C.M.D. called the report from the applicant No. 3 vide order dated 22.8.2007. Since the above representation was under process by the office of the C.M.D., the said fact was also informed to the complainant by the C.M.D., through H.S. Mahesh under the R.T.I. Act, copy of the representation dated 22.8.2007 has been annexed as CA-23 to the counter-affidavit. Ultimately on 31.8.2007 after inquiry by Sri Ashutosh Mishra, Circle Officer, Karchhana found that the incident had taken place on 14.7.2007 and the allegations against the applicants were correct, hence he passed an order dated 31.8.2007 to register the F.I.R. and investigate the matter, copy of the order dated 31.8.2007 has been annexed as CA-2 to the counter-affidavit.

25. The complainant argued that due to influence of the applicants, the F.I.R. of the complainant was not lodged by the Station Officer of the Police Station Industrial Area till 13.9.2007 in spite of the order of the Circle Officer, Karchhana and on a complaint being made to the Circle Officer on 14.9.2007, the F.I.R. of the incident was registered as case crime No. 194 of 2007 under Sections 147, 323, 504, 506 and 341, I.P.C., P.S. Industrial Area, Allahabad. The complainant further submitted that the accused persons have influenced the various Investigating Officer's of the case who submitted the final report in the incident though charge-sheet was submitted on 15.10.2007 by Investigating Officer Indrapal Singh which was forwarded to the Circle Officer for being forwarded to the court concerned but the said charge-sheet was not forwarded to the court and it was cancelled by Sri Ashok Kumar, S.P. (Jamunapar) vide order dated 18.1.2008 and directed that the said charge-sheet alongwith case diary be sent to the In-charge Officer of the Police Station Industrial Area without giving any reasonable and sufficient ground ordered for reinvestigation and change of Investigating Officer.

26. It was further submitted that the complainant was threatened and pressurized by the applicants to withdraw his F.I.R. for which the complainant on 8.12.2007 sent a complaint to S.S.P., Allahabad by registered post. The management also lodged a false case against the wife of the complainant and false charge-sheet was submitted on 10.12.2007 against complainant's wife who is also an employee of the Company for committing misconduct by not vacating

the house of her husband with intention to pressurize the complainant for withdrawal of the criminal cases, copy of the same has been annexed as CA-31 to the counter-affidavit. The applicants and the other accused persons on 14.12.2007 disconnected/discontinued the electricity and water connection of the house No. B9, Officers Colony, I.T.I., Naini. Allahabad of the complainant despite the monthly rent being continuously deducted from the salary of the complainant. When the complainant complaint about the disconnection of water and electricity, the employees of the company misbehaved with him and he was assaulted by them in which he received several injuries. Copy of the injury report has been annexed as CA-32 to the counter-affidavit.

27. On 19.3.2008, the complainant filed Civil Misc. Writ Petition No. 2305 of 2008 before this Court directing the Company to restore the water supply and electricity connection to the official accommodation of the complainant and further directed not to harass the complainant, copy of the order dated 18.3.2008 has been annexed as CA-33 to the counter-affidavit.

28. The complainant's wife Smt. Neerja Raghuvanshi was also employed in the Naini Unit of the Company alongwith the complainant. She was harassed by the Company Officials hence she filed Civil Misc. Writ Petition No. 19877 of 2008 against the departmental charge-sheet dated 10.12.2007 issued by the applicant through Subordinate Officer Govind Lal Dwivedi without jurisdiction and also ordered for inquiry dated 16.2.2008 and the said writ petition was allowed by this Court vide order dated 30.4.2008, the relevant extract of the observation made by this Court in the said Judgment is being quoted here below:

"In the aforesaid facts and circumstances, as the respondents have usurped the power to initiate disciplinary proceedings against the petitioner without any legal basis or foundation, apparently to harass the petitioner" copy of the same has been annexed as CA-34 to the counter-affidavit.

29. The complainant submitted that in the above manner, the applicants have been harassing the complainant and his family members and they have also tried to temper with the evidence and threatened the witnesses of the incident dated 14.7.2007. Sri A.K. Singh, Subordinate employee had given a false statement in the ex parte departmental proceeding under the dictate of the applicants and has also given a false statement u/s 161, Cr.P.C. in case crime No. 194 of 2007 which relates to the incident dated 14.7.2007 and submitted a false affidavit before the D.I.G. in favour of the applicants for misleading the Investigation with respect to case crime No. 194 of 2007. Sri A.K. Agarwal, Secretary of the Officers Club had also given a statement in the departmental inquiry relating to incident dated 14.7.2007 where he has denied the Incident dated 14.7.2007 that he was not present nor saw the complainant and his family members at the Officers Club. The daughter of complainant was participating in the programme organized on 14.7.2007. Sri A.K. Agarwal, Secretary of the Officers Club was present on the date of the incident as has been mentioned in the F.I.R. of the complainant, has filed false affidavit during the course of investigation and subsequently denied his

presence at the time of incident as he has also been influenced and by the applicants being the employee of the company.

30. The complainant argued that from the perusal of evidence collected during investigation and of the witnesses namely Arun Kumar Nishad and Ram Charan Singh who was an ex-employee of the company had also come to Naini Unit to meet the C.M.D. Sri Preetam Singh who was to attend the function on 14.7.2007 in which the complainant and his family members were misbehaved, manhandled and insulted by the applicants alongwith Security Guards of the company at the Officers Club and they were stopped from entering the Officers Club especially when the daughter of the complainant was to participate in the programme organized by the Officer's Club, have corroborated the prosecution story. Hence, the complainant submitted that the charge-sheet submitted against the applicants discloses a cognizance offence and the court below has rightly taken cognizance of offence against the applicant, which warrants their trial and present petition is wholly misconceived and is liable to be dismissed by this Court.

31. Considered the submissions made by learned counsel for the parties. From the perusal of the record, it is apparent that the complainant and his family members were entitled to enter in the Officers Club on 14.7.2007 in the cultural programme and the dinner which was organized by the Officers Club in which the C.M.D. of the Company was the Chief Guest. Admittedly the daughter of the complainant was participating in the said cultural programme was practicing in the Club for the last 10 days for the said cultural programme, which itself shows that the complainant and his family members were entitled to enter into the Officers Club. The applicants alongwith other security guards had misbehaved, manhandled and insulted the complainant and his family members and the security guards have also raised guns on the complainant and his family members and did not allow them to go in the club and attend the cultural programme and were forced to go back after great humiliation. From the perusal of the evidence collected during investigation, it is apparent that cognizable offence is disclosed against the applicants alongwith other accused persons. The submission of the learned counsel for the applicants that the present proceedings have been initiated by the complainant for malicious prosecution of the applicants is not sustainable in the eyes of law as cognizable offence is disclosed on the basis of impugned charge-sheet on which a cognizance has been taken by the learned Magistrate and the applicants have rightly been summoned for trial. No doubt there has been litigations pending between the parties on the either side but taken into account the allegations made in the complaint, it cannot be said that no offence is made out against the applicants.

32. The submission of learned counsel for the applicants that the cognizance of the offence has taken after 5 years of the incident is not sustainable in the eyes of law as the offence in question was being investigated by the Police and it took 5 years to conclude the investigation which was being influenced by the applicants on account of their high position in the Company. On 17.12.2012,

charge-sheet was submitted and the cognizance taken by the Magistrate on 22.12.2007, hence the said argument of learned counsel for the applicant is liable to be rejected. The complainant has relied upon the Judgment of the Apex Court in the case of State of Karnataka Vs. M. Devendrappa and Another, , in which it has been held that inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case Where the entire facts are Incomplete and hazy more so when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. It was further held that when an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceeding. Thus the law laid down by the said judgment of the Apex Court is squarely applicable in the facts of the present case.

33. From the perusal of the material on record and looking into the facts of the case at this stage it cannot be said that no offence is made out against the applicant. All the submissions made at the bar relate to the disputed questions of fact, which cannot be adjudicated upon by this Court u/s 482, Cr.P.C. At this stage only prima facie case is to be seen in the light of the law laid down by Supreme Court in cases of R.P. Kapur Vs. The State of Punjab, ; State of Haryana and others Vs. Ch. Bhajan Lal and another Shri S.A. Khan, ; State of Bihar and Another Vs. P.P. Sharma, IAS and Another, ; and lastly Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, .

34. Considering the above judgments of the Apex Court, in my opinion, the proceeding against the applicants cannot be quashed as cognizable offence is disclosed against them.

35. The prayer for quashing the entire proceeding based on the charge-sheet as well as summoning order is refused.

36. Hence, no interference is called for by this Court in the present 482, Cr.P.C. application. The application lacks merit and Is, accordingly, dismissed.