

(2024) 10 MP CK 0009

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 35183 of 2024

Santosh Kumar Malakar

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 15-10-2024

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 528

Indian Penal Code 1860 — Section 406

Code of Criminal Procedure 1973 — Section 161, 173, 397, 482
Constitution of India 1950 — Article 226

Citation : (2024) 10 MP CK 0009

Hon'ble Judges : Prem Narayan Singh, J

Bench : Single Bench

Advocate : Lokesh Mehta, Surendra Gupta

Final Decision : Dismissed

Judgement

Prem Narayan Singh, J

The petitioner has filed the present petition under Section 528 of BNSS, 2023 for quashment of the FIR bearing No.189/2023 registered against the petitioner at Police Station Civil Line, Dewas under Section 406 of IPC and subsequent proceedings pending before the CJM, Dewas in RCT no.2211/2023.

2. As per the prosecution story, a written complainant was filed by the complainant Pramit Dheriya who is reader of CJM, Dewas on 21.04.2023 by submitting that the petitioner was given a tractor and chassis on supurdagi by learned trial Court and vide notice dated 20.12.2022, he was directed to produce the same before the court on 21.12.2022, but the petitioner has not produce the same before the executing Court, hence, on the basis of the complainant, an FIR was registered against the petitioner under Section 406 of IPC.

3. Counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated in the present crime. It is further submitted that bare

reading of the FIR itself is clearly showing that non producing of the tractor and Chassis before the trial Court is just a default and non compliance of the order of trial court, but such filing of complainant and registration of the FIR on the said complaint under the provision of Section 406 of IPC is against the settled provisions of law. If one, the tractor and chassis is not produced, not further opportunity is given only the notice was issued on 20.12.2022 and on 21.12.2022 it was directed to be produced before the Court without giving no further time in this matter. The notice issued to the petitioner is also not served upon the petitioner properly. Therefore, the trial Court should ought to have given time to the petitioner either by issuing any warrants of other modes, but registration of FIR directly is abuse of process of law. The applicant neither committed any breach of trust with the Court nor committed any act to sale or misappropriated the property taken from the Court on supurdagi and the act of default and the act of breach of trust is prima facie differentiate while reading the FIR. It is also the contention of counsel or the petitioner that the petitioner is Govt. Servant and prior to registration of the FIR, the prosecution has not taken any Sanction of the Government. Hence, prays for quashment of the FIR as well as subsequent proceedings pending before the trial Court.

4. Counsel for the State has opposed the prayer by submitting that petitioner has faulted the order of the learned trial Court and non-compliance of the direction of the Court should be treated strictly and therefore, the police authorities has rightly registered the FIR against the petitioner under Section 406 of IPC.

5. I have heard the counsel for the parties and perused the record.

6. In so far as the contention regarding sanction is concerned, the Tractor bearing registration No.MP4AA0422 engine No.S337707012, chassis No.305019 was handed over to the petitioner in his personal capacity, hence, at this stage of taking cognizance, the question of sanction can not be considered. Nevertheless, if the petitioner satisfy the trial Court that he has taken the tractor in his custody and working as a public servant, he may raise this ground before the trial Court as and when required. It is also well established that the question of sanction can be raised before the trial Court even at the final stage. However, only on this ground, FIR against the petitioner cannot be quashed at this earlier stage.

7. It is further expostulated that there is nothing on record to show that the petitioner was property served or not. Nevertheless, it is a moot question, which can be raised before the trial Court at the stage of trial. However, having gone through the record, the FIR and statements of witnesses recorded under Section 161 of Cr.P.C, fresco the fact that the notice was issued on 16.12.2022 and it was served on 20.12.2022 upon the petitioner. Instead of that notice, the petitioner disobeyed and not furnished the said tractor before the trial Court on 21.12.2022. Under these circumstances, the FIR was lodged by the complainant namely Pramit Dheriya, who is a civil Court employee. Actually, this is a case where the FIR has been lodged by an employee of Civil Court and as per the allegations, the said misappropriation was committed against the order of Civil

Court after entrustment of the said order to the petitioner. In this way, only on these grounds, the whole criminal proceedings cannot be quashed.

8. On this aspect, the law laid down by Hon'ble Apex Court in the case of *Kamaladevi Agrawal Vs. State of W.B.* (2002) 1 SCC 555, Hon'ble Apex Court considered the scope and ambit of Section 482 of Cr.P.C. with regard to quashment of FIR, complaint and criminal proceedings, reads as under :-

"This Court has consistently held that the revisional or inherent powers of quashing the proceedings at the initial stage should be exercised sparingly and only where the allegations made in the complaint or the FIR, even if taken at the face value and accepted in entirety, do not prima facie disclose the commission of an offence. Disputed and controversial facts cannot be made the basis for the exercise of the jurisdiction."

9. In the case of *R. Kalyani Vs. Janak C. Mehta*, (2009) SCC 516, Hon'ble Apex Court further observed that :-

Propositions of law which emerge from the said decisions are :

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

10. The aforesaid legal position has been reiterated in the case of *Mahesh Chaudhary Vs. State of Rajasthan and another*, (2009) 4 SCC 439. Relevant paragraphs of the judgment are condign to quote here :-

"13. 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.

14. It is also well settled that save and except 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 Complaint Petition fulfill the ingredients of the offences alleged against the accused."

11. Further, the Hon'ble Apex Court in the case of State of M.P. vs. Deepak [(2019) 13 SCC 62], reversing the order of discharging of the High Court, has enunciated the principles which the High Courts must keep in mind while exercising their jurisdiction under the provision. In this case, endorsing another case of Hon'ble Apex Court in the case of Amit Kapoor vs. Ramesh Chander [(2012) 9 SCC 460 has quoted as under:-

"27. .. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion

formed prima facie."

12. Again, on this aspect, the verdict of Hon'ble the Apex Court in a recent judgment of Directorate of Enforcement Vs. Niraj Tyagi and Ors. reported in 2024 LawSuit (SC) 112 decided on 13.02.2024, is significant. Paras 22, 23 & 24 are worth to be referred to the context of this case :-

"22. Recently, a Three-Judge Bench in Neeharika Infrastructure (supra) while strongly deprecating the practice of the High Courts in staying the investigations or directing not to take coercive action against the accused pending petitions under Section 482 of Cr.P.C., has issued the guidelines, which may be reproduced hereinbelow for ready reference:-

"Conclusions

33. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482CrPC 4 2017 (2) SCC 779 and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/charge-sheet is filed under Section 173 CrPC, while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482CrPC and/or under Article 226 of the Constitution of India, our final conclusions are as under:

33.1. Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence.

33.2. Courts would not thwart any investigation into the cognizable offences.

33.3. It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on.

33.4. The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the "rarest of rare cases" (not to be confused with the formation in the context of death penalty).

33.5. While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

33.6. Criminal proceedings ought not to be scuttled at the initial stage.

33.7. Quashing of a complaint/FIR should be an exception rather than an ordinary rule.

33.8. Ordinarily, the courts are barred from usurping the jurisdiction of the

police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere.

33.9. The functions of the judiciary and the police are complementary, not overlapping.

33.10. Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.

33.11. Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

33.12. The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported.

Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure.

33.13. The power under Section 482CrPC is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court.

33.14. However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in R.P. Kapur [R.P.Kapur v. State of Punjab, 1960 SCC OnLine SC 21 : AIR 1960 SC 866] and Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , has the jurisdiction to quash the FIR/complaint. 33.15. When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

33.16. The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 CrPC and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely,

casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 CrPC before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/charge-sheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 CrPC and/or under Article 226 of the Constitution of India.

33.17. Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 CrPC and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

33.18. Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

23. The impugned orders passed by the High Court are in utter disregard and in the teeth of the said guidelines issued by the Three-Judge Bench of this Court. It was sought to be submitted by the Learned Counsels for the respondents-accused that the allegations made in the FIRs are of civil nature, and have been given a colour of criminal nature. According to them, as discernible from the record, number of proceedings had ensued between the parties pursuant to the actions taken by the IHFL against the complainant-borrower for the recovery of its dues under the SARFAESI Act, and the borrower M/s Shipra after having failed in the said proceedings had filed the complaints with ulterior motives. We do not propose to examine the merits of the said submissions as the writ petitions filed by the concerned respondents-accused seeking quashing of the FIRs on such grounds are pending for consideration before the High Court. It would be open for the High Court to examine the merits of the petitions and decide the same in accordance with law.

24. Without elaborating any further, suffice it to say that judicial comity and judicial discipline demands that higher courts should follow the law. The extraordinary and inherent powers of the court do not confer any arbitrary jurisdiction on the court to act according to its whims and caprice."

13. It is also well established that when the case is prima facie established from

the material available on record it would not apposite for the High Court to quash the criminal proceedings considering the chances of conviction or acquittal. Where material evidence is available against the applicant it should be left to be decided by the trial Court which is the appropriate forum for the evaluation of the said materials and evidences. On this aspect the view of Hon'ble Apex Court recently held in the case of Just Rights for Children Alliance & Anr. vs. S. Harish & Ors., reported in 2024 LawSuit(SC) 847 is condign to quote here as under:-

189. Once the foundational facts are prima facie established from the materials on record, it would be improper for the High Court in a quashing petition to conduct an intricate evidentiary inquiry into the facts and ascertain whether the requisite mental elements are present or not. All these aspects should be left to be decided by the trial court which is the appropriate forum for the evaluation of the same, especially where the statutory presumption has been attracted prima facie from the material on record.

190. When the High Court quashes any criminal proceedings without considering the legal effect of the statutory presumption, it effectively scuttles the process of trial and thereby denies the parties the opportunity to adduce appropriate evidence and the right to a fair trial. This would not only defeat the very case of the prosecution but would also thwart the very object of a particular legislation and thereby undermine the public confidence in the criminal justice system.

14. In view of the same this Court is not inclined to quash the FIR or the consequential criminal proceedings arising out of the same. Accordingly, the petition being devoid of merits is hereby dismissed. Before parting, it is clarified that trial Court shall not be influenced by the observations of this Court made in this order, during trial.

15. A copy of this order be sent to the trial Court concerned for necessary information and compliance.

Certified copy, as per rules.