

(2015) 03 AHC CK 0035

In the Allahabad High Court

Case No : Application U/s 482 No. 6200 of 2015

Shahnawag and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 202, 204, 482

Penal Code, 1860 (IPC) — Section 354, 504, 506

Citation : (2015) 03 AHC CK 0035

Hon'ble Judges : Karuna Nand Bajpayee, J.

Bench : Single Bench

Advocate : V.P. Gupta, for the Appellant

Final Decision : Disposed off

Judgement

Karuna Nand Bajpayee, J.—This application under Section 482 Cr.P.C. has been filed seeking the quashing of entire criminal proceeding in Complaint Case No. 1518 of 2014 (Smt. Bano v. Shahnawag and others) under Sections-354, 504, 506 I.P.C., Police Station-Amroha Nagar, District-Amroha pending in the court of Second Additional Civil Judge (Junior Division/Judicial Magistrate, Amroha.

2. Heard applicants" counsel and learned AGA.

3. Entire record has been perused.

4. All the contentions raised by the applicants" counsel relate to disputed questions of fact. The court has also been called upon to adjudge the testimonial worth of prosecution evidence and evaluate the same on the basis of various intricacies of factual details which have been touched upon by the learned counsel. The veracity and credibility of material furnished on behalf of the prosecution has been questioned and false implication has been pleaded.

5. The law regarding sufficiency of material which may justify the summoning of accused and also the court"s decision to proceed against him in a given case is

well settled. The court has to eschew itself from embarking upon a roving enquiry into the last details of the case. It is also not advisable to adjudge whether the case shall ultimately end in conviction or not. Only a prima facie satisfaction of the court about the existence of sufficient ground to proceed in the matter is required.

6. Through a catena of decisions given by Hon"ble Apex Court this legal aspect has been expatiated upon at length and the law that has evolved over a period of several decades is too well settled. In the case of Chandra Deo Singh Vs. Prokash Chandra Bose and Another, the Apex Court had observed as follows:

"The courts have also pointed out in these cases that what the magistrate has to see is whether there is evidence in support of the allegations of the complainant and not whether the evidence is sufficient to warrant a conviction. The learned Judges in some of these cases have been at pains to observe that an enquiry under Section 202 is not to be likened to a trial which can only take place after process is issued, and that there can be only one trial. No doubt, as stated in sub-section (1) of Section 202 itself, the object of the enquiry is to ascertain the truth or falsehood of the complaint, but the magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant." 7. In the yet another case of Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker and Another, the Hon"ble Supreme Court had expressed the views in the following terms:

"Section 202 says that the magistrate may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against and direct an inquiry for the purpose of ascertaining the truth or falsehood of the complaint; in other words, the scope of an inquiry under the section is limited to find out the truth or falsehood of the complaint in order to determine the question of the issue of process. The inquiry is for the purpose of ascertaining the truth or falsehood of the complaint; that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at the stage; for the person complained against can be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial." 8. In the case of Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, the Hon"ble Apex Court had held as follows:

"The magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the magistrate or to examine the case on

merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations, in our opinion, are totally foreign to the scope and ambit of an inquiry under Section 202 of the Code of Criminal Procedure which culminates into an order under Section 204 of the Code. Thus it may be safely held that in the following cases an order of the magistrate issuing process against the accused can be quashed or set aside:

(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) Where the discretion exercised by the magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings."

9. The Apex Court decisions given in the case of R.P. Kapur Vs. The State of Punjab, and in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, have also recognized certain categories by way of illustration which may justify the quashing of a complaint or charge sheet. Some of them are akin to the illustrative examples given in the above referred case of Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, . It was observed by the Hon"ble Apex Court in Bhajan Lal's case as follows:

"The following categories can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure can be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though 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 F.I.R. 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."

10. Illumined by the case law referred to herein above, this Court has adverted to the entire record of the case.

11. The submissions made by the applicants' counsel call for adjudication on pure questions of fact which may be adequately adjudicated upon only by the trial court and while doing so even the submissions made on points of law can also be more appropriately gone into by the trial court in this case. This Court does not deem it proper, and therefore cannot be persuaded to have a pre-trial before the actual trial begins. A threadbare discussion of various facts and circumstances, as they emerge from the allegations made against the accused, is being purposely avoided by the Court for the reason, lest the same might cause any prejudice to either side during trial. But it shall suffice to observe that the perusal of the complaint, and also the material available on record make out a prima facie case against the accused at this stage and there appear to be sufficient ground for proceeding against the accused. I do not find any justification to quash the complaint or the summoning order or the proceedings against the applicant arising out of them as the case does not fall in any of the categories recognized by the Apex Court which may justify their quashing.

12. The prayer for quashing the same is refused as I do not see any abuse of the

Court's process either.

13. However, a request has been made by the counsel that as it is being desired by the accused to obtain bail after surrendering in the court below, a protective direction may be issued to the lower court to decide the proposed bail application on the same day in the light of the law laid down in Full Bench decision of Amarawati and Another (Smt.) Vs. State of U.P., .

14. It may be observed that the law regarding the hearing of bail applications on the same day and all its related aspects have been comprehensively dealt with in the aforesaid Full Bench decision of Amarawati and Another (Smt.) Vs. State of U.P., relied upon by the counsel which was also approved by the Hon'ble Supreme Court in the case of Lal Kamendra Pratap Singh Vs. State of U.P. and Others, . All the courts must endeavour to decide the bail applications on the same day in suitable cases, if it is possible for them to do so depending upon the peculiar facts and circumstances of the case in question. This is a matter of lower court's discretion which they must exercise judiciously in appropriate cases.

15. Above mentioned Full Bench decision of this Court and the decision of Hon'ble Apex Court are binding on the lower courts. They must be followed in letter and spirit. There is no need to pass separate orders in this regard.

16. However, in the peculiar facts and circumstances of the case it may be observed that if after surrendering in the court below an application for bail is moved on behalf of the accused within three months from today, the same shall be decided in accordance with law as has been laid down in aforementioned cases, if possible on the same day.

17. No coercive measures shall be taken or given effect to in the aforesaid period or till the date of appearance of the accused in the court below, whichever is earlier.

18. It is made clear that no application for extension of time shall be entertained if this order is not availed by the accused in the stipulated period of time.

19. It is further clarified that for the present this order has been passed only with regard to the accused on behalf of whom this application u/s. 482 Cr.P.C. has been moved in this Court.

20. With the aforesaid observations this application is finally disposed off.