
(2012) 08 AHC CK 0188
In the Allahabad High Court
Case No : Application No. 22733 of 2012

Shambhu Nath and Others	Vs	APPELLANT
State of U.P. and Another		RESPONDENT

Date of Decision : 24-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2012) 08 AHC CK 0188

Hon'ble Judges : Naheed Ara Moonis, J

Final Decision : Dismissed

Judgement

Naheed Ara Moonis, J.—Heard Sri V.P.Srivastava, learned Senior Advocate assisted by Sri Lav Srivastava and Sri Vijay Shanker Mishra, learned counsel for the applicants, Sri B.R.Sharma and Shri A.K.Srivastava, learned counsel appearing on behalf of the opposite party no.2 and learned AGA and have been taken through the record.

2. By means of the third application under section 482 Cr.P.C. the applicants have again approached this Court with the same prayer to quash the proceedings of the Criminal Case No. 651 of 2005 arising out of Case Crime No. 198 of 2003 (State of U.P.Vs. Suraj Bhan and others) pending in the court of Additional Chief Judicial Magistrate, Court No. 2, Meerut for the offence punishable under Sections 420, 467, 468, 471, 406 and 120B I.P.C. registered at police station Medical, District Meerut. It is congruous to demonstrate that after taking cognizance by the learned Magistrate in the aforesaid case, the applicants including Shambhoo Nath (who is arrayed as applicant no.1) and has died approached this Court by means of Criminal Misc. Application No.3536 of 2004 praying for the same relief which is incorporated in the present application and all the identical grounds which have been taken in the present application were urged and advanced in the aforesaid application. The another Bench of this Court vide order dated 7th May 2004 disposed of the aforesaid application. The order dated 7th May 2004 passed by Hon"ble Mr.Justice R.C.Deepak disposing of the

aforesaid application is delineated hereunder :

"Heard Sri G.S Chaturvedi, learned Senior counsel assisted by Sri Sri Sumit Gopal, learned counsel for the applicants, Sri Kamal Krishna, learned counsel for the opposite party no.2 and learned Addl. Government Advocate for the State and perused the record.

The contention of the learned counsel for the applicants is that the applicants be permitted to raise all these legal questions regarding the facts of the case before the trial court and the trial court shall dispose of those objections on the basis of the evidence on record and the law involved therein.

Under the facts and circumstances of the case, in the event the applicants raise objections with regard to the facts of the case and the law involved therein, the trial court shall dispose of the same on the basis of the evidence on record and the law involved therein. However, the trial court shall not insist the personal appearance of the applicants unless required for specific purpose.

With these observations, the application is disposed of."

3. Pursuant to the order dated 7.5.2004, the applicants filed their objections before the court below which was rejected by the court below vide order dated 26.11.2005.

4. The operative part of the aforesaid order dated 7.5.2004 was only transcribed in the second application under section 482 Cr.P.C. and the same was also placed & argued before Hon"ble the Apex Court while challenging the order dated 29.5.2012 passed by this court in second Criminal Misc. Application No. 18442 of 2005 under section 482 Cr.P.C. At the cost of repetioin in the second application under section 482 Cr.P.C. also the same prayer for quashing the proceedings of Criminal Case No. 651 of 2005 was made along with the order dated 26.11.2005 passed by the trial court after the first Criminal Misc. Application No. 3536 of 2004 under section 482 Cr.P.C was disposed of.

5. Thus in all three applications under section 482 Cr.P.C. facts urged by the learned counsel for the applicants are exactly identical. The order dated 29.5.2012 was challenged before Hon"ble Apex Court only by Narendra Kumar Sharma and Umesh Chandra Sharma by means of S.L.P. No. 4605 of 2012. Ground No.EE taken on page 40 of the SLP runs as follows :

"(EE) For that the Hon"ble High Court has only considered the aspect of jurisdiction (and that too erroneously) even though numerous grounds/points for quashing were mentioned and argued in the quashing petition. Thus, the impugned order is clearly vitiated."

6. The Hon"ble Apex Court vide order dated 12.6.2012 in the aforesaid S.L.P. while affirming the order passed by the learned Magistrate as well as by this Court held that there is no infirmity in the finding and was pleased to observe that if any other ground was urged but not considered by the High Court, it is for

the applicants to approach the High Court and it was clarified by Hon''ble Apex Court that if the applicants move the High Court, the High Court will examine whether any other ground was omitted to be considered though urged. On the strength of this observation, the instant third Criminal Misc. Application No.22733 of 2012 under section 482 Cr.P.C. has been filed not only by Narendra Kumar Sharma and Umesh Chandra Sharma who had only filed SLP with a prayer to quash the entire proceedings of the aforesaid case but also by others who were not arrayed as applicants in the S.L.P. All the applicants had urged those grounds again before this Court which was raised and considered vide order dated 7.5.2004 when the first Criminal Misc. Application No. 3536 of 2004 was filed. The Hon''ble Single Judge was pleased to issue a direction to the applicants to raise all the objections with regard to the facts and law involved therein which was well considered by the trial court in its order dated 26.11.2005. The Hon''ble Apex Court after perusing the order passed by the trial court as well as of this Court observed that the matter was elaborately considered by the High Court and no infirmity or absurdity was found in the order passed by the learned Magistrate. After considering the objection of the learned counsel for the applicants, the learned Magistrate passed the order that there is no infirmity in the order dated 16.4.2004 taking cognizance against the applicants since the forged gift was prepared on the basis of documents stolen from the Head Office situated at Meerut, it was rightly held about the territorial jurisdiction of Meerut Court to try the offence against the applicants. The question of jurisdiction cannot be decided without delving into the facts of the case therefore, the contention of the learned counsel for the applicants in the instant application under section 482 Cr.P.C that the merit of the case was not considered is absolutely uncalled for as the question of jurisdiction to try the case can only be decided after considering the merits of the case. The merit of the case was also considered by another Bench of this Court in the earlier application under section 482 Cr.P.C. therefore, in the absence of any new ground the same facts cannot be agitated time and again in the guise that only question of jurisdiction was dealt with by this Court while dismissing the second application under section 482 Cr.P.C. In my considered opinion it is sheer misuse of the process of court by approaching this Court time and again agitating the same issue in respect of which another Bench of this Court has expressed opinion that the trial court shall dispose the matter on the basis of the evidence on record and the law involved therein. It would amount to review of the earlier order passed by this Court which dehors the provisions of Criminal Procedure Procedure. The Hon''ble Apex Court has also observed that if any other ground was urged and not considered/ omitted by the High Court will be examined by the High Court. There is no new ground in the present Criminal Misc. Application except the repetition of facts/ grounds raised earlier.

7. The learned counsel for the complainant has raised preliminary objection with regard to the maintainability of the petition and contended that the applicants had not approached the Hon''ble Apex Court with clean hands by filing the SLP.

Material facts were so much squeezed to the extent to some how obtain interim order in their favour and they had in fact also succeeded in getting the ex.parte order from the Hon''ble Apex Court. When the complainant came to know, he immediately approached the Apex Court by filing the recall application on 3.7.2012 which is still pending.

8. The submission of learned counsel for the applicants are identical and similar to the arguments advanced before this Court at the time of hearing of Criminal Misc. Application No. 3536 of 2004 and after hearing the learned counsel for the parties, the applicants were permitted to raise all the legal questions relating to the fact before the trial court therefore, the same cannot be recycled in the guise that the Apex Court has directed to approach the High Court and the High Court will examine whether any other ground was omitted to be considered though urged. When another Bench of this Court refused to quash the proceedings against the applicants, the Coordinate Bench cannot sit over that order which would amount to review/revision that dehors the rules enshrined in the Code of Criminal Procedure. This Court has intricately dealt with the facts of this Case in the order dated 29.5.2012. The filing of the successive application for the same cause is nothing but a sheer abuse of the process of law culminating into conflict in judicial orbit. The inherent power under section 482 Cr.P.C. cannot be used as an instrument to stifle the legitimate prosecution.

9. From the perusal of the interim order passed in Criminal Misc. Application No. 18442 of 2005 it is very much explicit that another Bench of this Court had granted indulgence in favour of the applicant no.1 only (Dr. Shambhu Nath who had died during the pendency of the aforesaid application under section 482 Cr.P.C) vide order dated 3.1.2006 that no coercive steps shall be taken against him. The Hon''ble Single Judge had never granted any interim order in favour of rest of the applicants including both the applicants who had approached the Apex Court. To clarify the conflict in the interpretation of the interim order dated 3.1.2006 passed by another Bench of this Court, it is indispensable to reproduce the same here under :

" Learned counsel for the respondent prays for and is granted one week's time to file counter affidavit. Rejoinder affidavit, if any, may be filed within a week thereafter.

List on 23.1.2006.

Till then the coercive steps shall not be taken against the applicant no.1 Dr. Shambhu Nath.

10. From a glance of the order dated 3.1.2006, it is crystal clear that no interim order was granted in favour of rest of the applicants. This material fact cannot be swallowed by the applicants in the guise of the order dated 3.1.2006. The applicants tried to mislead the Court in the garb of the order dated 3.1.2006 initially passed in the aforesaid petition. Quintessentially it is congruous to demonstrate that after the grant of arrest by Hon''ble Apex Court for a period of

three weeks from the date of order, all the applicants moved before the court below on 24.7.2012 asserting that pursuant to the direction of the Apex Court, the applicants are inquisitive to file fresh petition before this Court and there is every chance of success hence no coercive steps be taken against them to meet the ends of justice. It is very shameful on the part of the applicants to place knotty and unsupported facts before the court below when the order was passed by the Apex Court in favour of only two persons namely Narendra Kumar Sharma & Umesh Chandra Sharma. In the guise of the order dated 12.6.2012 passed by the Apex Court, the applicants have attempted to obtain the interim order in their favour as the nonbailable warrants have been issued against all of them. Applicants are thus misusing the inherent power of this Court and are avoiding to appear before the court concerned by adopting the circuitous method of agitating the same issue time & again. The court below had taken cognizance long back in the year 2004 on the basis of material collected during investigation. The exercise of power under section 482 Cr.P.C. can only be exercised when there is no other alternative remedy envisaged by the statute. It has been held in a catena of decisions by the Apex Court that in a proceedings under section 482 Cr.P.C. High Court will not interfere in any disputed question of facts. The inherent power under section 482 Cr.P.C. can only be exercised by this Court either to prevent abuse of process of any court or otherwise to secure the ends of justice. The contention of learned counsel for the applicants that the proceeding initiated against the applicants is sheer an abuse of process of Court due to mala fide reasons is not sufficient to stifle the prosecution case which discloses an offence justifying an investigation by police officer under section 156 (1) Cr.P.C. The probity of the prosecution version cannot be analysed thread bare at this stage. Any defect or irregularity in investigation however serious, has no direct bearing on the competency of the procedure relating to cognizance or trial of an offence. The inherent power under section 482 Cr.P.C. does not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. The statutory power has to be exercised sparingly with circumspection and in the rarest of rare cases. The legal position is well settled that if a prima facie offence is disclosed, the court will not normally interfere with the investigation. If the Court interferes with the investigation, it will be very difficult to the investigating officer to collect the material for establishing the offence and bringing the offender to book. The offender will succeed in escaping from the legal consequences and will go unpunished to the serious detriment of the cause of justice and the welfare of the society.

11. Further the learned counsel appearing on behalf of the complainant has vehemently argued that after thorough investigation the charge sheet was submitted mentioning that forged and fabricated gift deed was found to have been executed by the named accused persons. The learned Magistrate found that the documents were stolen from the head office of the Trust at Meerut and thereafter the forged and fabricated gift deed was prepared, consequently the Meerut court had the jurisdiction to take cognizance, hence the cognizance was

taken. The learned Magistrate by order dated 15.4.2005 rejected the objection, which was not challenged and had attained finality. The question of jurisdiction has already been affirmed by the Hon''ble Apex Court. The order passed by the learned Magistrate on 26.11.2005 rejecting the objection of the applicants on facts & law after considering the entire facts and material cannot be said to suffer from any error of law. The applicants are trying to linger and stall the proceeding by adopting circuitous method. One person Dr. Shambhu Nath, the applicant no.1 died during the pendency of the application under section 482 Cr.P.C. but still he has been made a party in the instant petition. An application to recall the order dated 3.7.2012 has been moved before the Hon''ble Apex Court which is now pending. It is a clear case of forgery for the purpose of cheating, therefore, it cannot be said that the allegations made by the prosecution do not constitute an offence and the evidence collected by the investigating officer in support of the same do not make out a case against them and that cognizance taken by the learned Magistrate suffers from no illegality. The present application deserves to be dismissed with exemplary costs.

12. Having considered the rival submissions advanced by the learned counsel for the parties it transpires that the applicants have been raising the same question again and again so as to stifle legitimate prosecution which ex.facie discloses commission of a cognizable offence. The instant application contains all the averments which were made in the earlier application under section 482 Cr.P.C. The present case involves various questions of fact which cannot be dealt with by this Court in exercise of inherent power under section 482 Cr.P.C. It has repeatedly been held by this Court and by the Hon''ble Apex Court that factual aspect can very well be dealt with by the Magistrate concern as such the disputed defence cannot be considered at this stage in exercise of its power under section 482 Cr.P.C. Learned counsel for the applicants could not point out any illegality or perversity in issuance of nonbailable warrants against the applicants. The court below has exercised its power following the procedure of law. There is serious manoeuvring in the facts & legal position of the case by the applicants before this court and before Hon''ble Apex Court so as to trample the justice with ulterior motive. All the facts which were raised in the earlier application under section 482 Cr.P.C have now been reagitated. This Court does not see any new ground for interference in the proceedings pending before Addl. Chief Judicial Magistrate Court no.2 Meerut vide Case No.651 of 2005 (State of U.P. Vs. Suraj Bhan and others) under section 420/467/471/406/120B IPC Police Station Medical District Meerut. This application is bereft of merits and is accordingly dismissed.