

(2017) 01 AHC CK 0086

In the Allahabad High Court

Case No : Application U/s 482 No. 24126 of 2010

V. Chandrakeshkaran

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 03-01-2017

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 12GB, Section 406, Section 420, Section 504,
Section 506

Citation : (2017) 2 ADJ 815

Hon'ble Judges : Om Prakash-VII, J.

Bench : Single Bench

Advocate : Puneet Srivastava, Amit Saxena, Anuj Bajpai and Govind Saran Hajela, Advocates, for the Applicant in Application U/s 482 Nos. 24126 of 2010.; Govt. Advocate, A.K. Rai, R.N. Rai and Saurabh Kumar Srivastava, Advocates, for the Opposite Party in Application U/s 482 Nos. 24126 of 2010.; Puneet Srivastava, Amit Saxena and Anuj Bajpai, Advocates, for the Applicant in Application U/s 482 Nos. 32947 of 2010.; Govt. Advocate, A.K. Rai, R.N. Rai and Saurabh Kumar Srivastava, Advocates, for the Opposite Party in Application U/s 482 Nos. 32947 of 2010.

Final Decision : Allowed

Judgement

Om Prakash-VII, J.—Since these two applications under Section 482 CrPC have been filed against the same order and have been heard together, the same are being decided by this common order. Application No. 24126 of 2010 is being treated as leading case.

2. These applications u/s 482 CrPC have been filed with the prayer to quash the summoning order dated 3.9.2009 passed by the Chief Judicial Magistrate, Saharanpur in Case No. 214 of 2010 (Smt. Seema v. V. Chandrakeshkaran and others) under Sections 406, 420, 120-B, 504, 506 IPC, P.S. Sadar Bazar, District Saharanpur. Further prayer has been made to stay the further proceedings of the aforesaid case.

3. Heard Shri Navin Sinha, learned Senior Counsel assisted by Shri Amit Saxena, learned counsel for the applicants, Shri Santosh Kumar Tiwari, learned counsel for the complainant and the learned AGA appearing for the State and perused the record.

4. It is submitted by the learned Senior Counsel that the applicant (V. Chandrakeshkaran) was the Chairman and Executive Officer of Pentamedia Graphics Limited (in short the "Company") whereas the applicant (G. Swami Nathan) was the Company Secretary of the aforesaid Company. Neither they are concerned with the present matter nor the alleged offences are attracted against them. The concerned Magistrate while passing the impugned summoning order did not take into account the essential ingredients required under law to constitute the offence under Sections 406, 420, 120-B IPC. It is further submitted that the applicant G. Swami Nathan preferred a Writ Petition before the Madras High Court to change the name of the Company on 8.11.2004 which was allowed and information in that respect was published in the newspaper. A scheme was formulated by the Madras High Court on the amalgamation application under the Companies Act in the aforesaid Writ Petition. It is not disputed that the complainant was share-holder in the said Company but since the face value of the share depends upon the time to time ups and down of the share market, the applicants were not responsible for payment of the share at the rate when the same were purchased. As is clear from the material available on record and the affidavits filed in the matter, each and every share-holders were informed about the proceeding pending before the Madras High Court for their objections. At this stage, learned Senior Counsel has referred to paragraph 3 of the counter affidavit and the notice sent by the Madras High Court to share-holders. Learned Senior Counsel also referred to the judgment of the Madras High Court passed in the said writ petition as well as the Scheme. Referring to the contents of the complaint and the statement recorded under Sections 200 and 202 Cr.P.C., it is also contended that the concerned Magistrate while passing the summoning order did not apply judicial mind. If the facts mentioned in the complaint are taken as true then also offence under Sections 406 and 420 IPC are not made out against the applicants. Telephonic information said to have been obtained by one Sushil Kumar Chauhan, a broker, cannot be a ground to initiate proceedings against the applicants. Offence regarding insult, threat / intimidation said to have been caused by the co-accused Sushil Kumar Chauhan can also not be a ground to prosecute the applicants. If telephonic conversation was not made by the applicants with the complainant then neither the offence under Sections 504 and 506 IPC nor under Section 120-B IPC are made out. Referring to the decision/ scheme formulated in the said writ petition by the Madras High Court and the provisions of Sections 391, 392 and 393 of the Old Companies Act, corresponding to the provisions of Sections 230, 231 and 232 of the Companies Act, 2013, it is submitted that if there was any grievance to any of the share-holders, they might approach the Madras High Court for modification in the judgment passed in the said writ petition. Thus on this ground

also criminal prosecution cannot be permitted to continue further against the applicants. It is lastly submitted that since the applicants are not the resident of territorial jurisdiction of the court concerned, the summoning order on this ground is also without application of judicial mind. Mandatory provision for enquiry, as provided under Section 202 Cr.P.C. have not been followed. Hence in these circumstances, the impugned order suffers from infirmity and illegality and the proceeding of the aforesaid case being abuse of process of law deserves to be quashed.

5. On the other hand, learned counsel for the complainant as well as the learned A.G.A. appearing for the State submitted that at this stage, only a prima facie case is to be seen and from the material available on record, it cannot be said that no prima facie case is made out against the applicants. Meticulous analysis of the evidence is not required at this stage. There is sufficient evidence against the applicants to proceed with the trial. It is not disputed that the complainant has purchased the shares of the said Company but the proceed (profit), face value have not been returned. There is no infirmity or illegality in the impugned order warranting interference by this Court. In support of his submissions, learned counsel for the complainant as well as the learned A.G.A. placed reliance on the decision of the Supreme Court in *Sonu Gupta v. Deepak Gupta and others*, 2015 2 Crimes (SC)1.

6. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record including the case law.

7. The Hon'ble Supreme Court in the case of *Sonu Gupta* (supra) relied upon by the learned counsel for the complainant as well as the learned AGA has held that merits of the allegations levelled in the complaint are not required to be touched in the application under Section 482 Cr.P.C.

8. Further, in a recent pronouncement, the Hon'ble Supreme Court in *Amanullah and another v. State of Bihar and others*, (2016) 6 SCC 699, has held as under (paragraphs 26 and 27 of the said SCC).

"26. The proposition of law relating to Section 482 of the CrPC has been elaborately dealt with by this Court in *Bhajan Lal's* case (supra). The relevant paras 102 and 103 of which read thus:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised 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 FIR do not disclose a cognisable 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 cognisable offence but constitute only a non-cognisable 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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

27. Further, this Court in the case of *Rajiv Thapar v. Madan Lal Kapoor*, (2013) 3 SCC 330 has laid down certain parameters to be followed by the High Court while exercising its inherent power under Section 482 of the CrPC, in the following manner:

"29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of

committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to herein above, would have far-reaching consequences inasmuch as it would negate the prosecution's / complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise

of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

(emphasis supplied)

9. Thus, in light of the observations made by the Apex Court in the case of Sonu Gupta (*supra*) as well as in Amanullah case (*supra*), the Court proceeds to analyse / discuss the submissions raised by the learned counsel for the parties keeping in view the facts and circumstances of the present case.

10. In the instant matter, to constitute the offence levelled against the applicants, two set of facts have been raised in the complaint. Offence under Sections 504 and 506 IPC on the basis of facts mentioned in the complaint against the present applicants are not attracted. Neither they have used any defamatory language nor have given any threat or intimidation to the complainant. Only allegation against the applicants is that co-accused Sushil Kumar Chauhan in connivance of the present applicants with mala fide intention misappropriated the share amount as also the profit accrued thereon. It is evident from the record that during pendency of the writ petition before the Madras High Court the share-holders were informed by the Court. Complainant on the day of incident had reached in the office of the co-accused Sushil Kumar Chauhan to know the changed name of the Company and also the value of the shares. If the entire facts mentioned in the complaint are taken into consideration, the conversations held between the co-accused Sushil Kumar Chauhan with the applicants are not clear in the matter. The allegations levelled in the complaint in this respect are based on the statement of coaccused Sushil Kumar Chauhan. Offences levelled against the applicants appear improbable and unbelievable especially in the circumstance when purchase of shares by the complainant has been admitted by the Company. Face value of shares always depends upon ups and down of the value of shares in the share market. Thus claiming the amount as mentioned in the complaint, at the rate when share were purchased, can also not be a ground to attract the offence under Section 406 and 420 IPC. The concerned Magistrate while passing the summoning order did not apply judicial mind. Co-accused Sushil Kumar Chauhan may be held responsible for the insult, threat / intimidation caused to the complainant but the persons residing at far away place having no telephonic conversation with the complainant cannot be held responsible in this matter. It appears that the present complaint against the applicants has been filed with mala fide intention. Remedy available to the complainant under the Companies Act has not been availed by her by approaching appropriate forum under the relevant law.

11. Hence, to the judicial conscience of the Court, the criminal proceeding of the present complaint case against the applicants is nothing but an abuse of process of law. It is a fit case to exercise the power vested in it under Section 482 CrPC.

The concerned Magistrate while passing the impugned order did not apply judicial mind and erred in passing the said order, which deserves to be quashed /set-aside against the applicants.

12. In view of the above discussions, in my view, there is substance in the submissions made by the learned counsel for the applicants. The applications are liable to be allowed and the proceedings of the aforesaid complaint case as well as the impugned order are liable to be quashed / set aside.

13. Accordingly, the applications are allowed. The proceedings of Case No. 214 of 2010 (Smt. Seema v. V. Chandrakeshkaran and others) under Sections 406, 420, 120-B, 504, 506 IPC, P.S. Sadar Bazar, District Saharanpur as well as the impugned order dated 3.9.2009 against the applicants are quashed / set-aside .

14. Copy of this order be also placed /kept on the record of Application Under Section 482 No. 32947 of 2010.