

Dileep Kumar Chaturvedi Alias Dilip ... vs State Of U.P. And Another on 4 February, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:15154

Court No. - 74

Case :- APPLICATION U/S 482 No. - 44645 of 2024

Applicant :- Dileep Kumar Chaturvedi Alias Dilip Kumar Chaturvedi And Another

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Awadh Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Vikas Budhwar,J.

1. Heard Sri Awadh Sharma, learned counsel for the applicants who are two in number, Sri Moti Lal learned A.G.A. for the State and Sri Shashi Prakash Giri, who appears for the opposite party no.2.

2. Learned counsel for the applicants submits that the entire proceedings including the summoning order dated 23.10.2024 passed by the Special Judge SC/ST Act, Mathura in Special Complaint Case No.56 of 2024 (Mayank vs. Dileep Kumar Chaturvedi & another), under Sections 323, 504, 506 I.P.C. and under Section 3(1) da, dha of the S.C./S.T. Act, P.S. Kotwali, Mathura is nothing but gross misuse of process of law particularly when the entire dispute which had occurred on the fateful day was nothing but offshoot of certain discordant monetary transactions which resulted in giving a criminal flavour. He further submits that the applicants are innocent, they have not committed any offence and is rather to a contrary they have taken some amount in advance for treatment of his son and they were gradually paying the same and according to them the actual amount had already been paid however just in order to create a scene a concocted story has been

planted that the offence stood committed just outside the Bank where the opposite party no. 2 used to work.

3. Learned AGA and Sri Shashi Prakash Giri, submit that be that as it may be offences are made out particularly when the abuses were hurled caste based and also in Hindi vernacular which is unbecoming of a gentle man and further offences are made out from the narration of the facts and the summoning order.

4. I have heard learned counsel for the parties and gone through the records.

5. In the opinion of the Court in the proceedings earlier under Section 482 of the Cr.P.C. the Court is not required to go into the merits of the charges as what is to be seen is only whether prima facie offence is made out or not coupled with the fact that the Court should not make a roving and a fishing inquiry in that regard.

6. Looking into the facts of the case, I am of the opinion that the present case does not come within the exceptions as carved out and in view of the judgement of the Hon'ble Apex Court and in the case of M/S Neeharika, Infrastructure Pvt. Ltd. vs. State Of Maharashtra and others reported in AIR 2021 SC 192 and the paragraph no. 23 culled out the following propositions of law which is enumerated hereinunder:-

"i) 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;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) 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;

iv) 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).

v) 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;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) 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;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) 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;

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

xii) 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;

xiii) The power under Section 482 Cr.P.C. 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;

xiv) 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 the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) 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;

xvi) 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 Cr.P.C. 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 Cr.P.C. 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/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) 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 Cr.P.C. 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.

xviii) 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."

7. On a pointed query, being made to learned counsel for the applicants, as to whether there was any jurisdictional error committed by the court below, the learned counsel for the applicants could not point out any jurisdictional error committed by the court below.

8. Resultantly, in absence of any jurisdictional infirmity or illegality pointed out by the learned counsel for the applicants, no good ground is made to quash the charge sheet as well as the summoning order, as even otherwise, this Court finds that this is not a fit case wherein inherit jurisdiction power under section 482 Cr.P.C. 1973, be invoked.

9. With the above observation, the present application under section 482 Cr.P.C. stands consigned to record.

10. However, needless to point out that it is always open for the applicants to prefer appropriate application before the court below seeking bail which this Court has no reason to disbelieve the same will be dealt with most expedition.

Order Date :- 4.2.2025 piyush