

Sagar Alias Golu vs State Of U.P. And Another on 30 April, 2025

Author: Deepak Verma

Bench: Deepak Verma

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:67424

Court No. - 84

Case :- APPLICATION U/S 482 No. - 43174 of 2024

Applicant :- Sagar Alias Golu

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

Counsel for Applicant :- Nitin Kumar,Rajendra Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma,J.

1. Heard learned counsel for the applicant and learned AGA for the State.

2. The present 482 Cr.P.C. application has been filed to quash the Charge-sheet no. 309/2022 dated 31.10.2022, Cognizance order dated 28.03.2023 passed by Additional Chief Judicial Magistrate, Nagina (Bijnor), District- Bijnor as well as the entire criminal proceeding of Criminal Case No. 897 of 2023 (State Vs. Virendra Singh and others), arising out of Case Crime No. 312 of 2022, under Sections 147, 323, 324, 325 I.P.C., P.S. Nagina, District- Bijnor, pending in the Court of Additional Chief Judicial Magistrate, Nagina (Bijnor), District- Bijnor.

3. The submission of learned counsel for the applicant is that opposite party no. 2 is the neighbour of the applicant whose younger son, namely, Kapil Kumar enticed away the elder sister (Sapna

Kumari) of the applicant in the month of April 2021, thereafter, the applicant married with her forcefully being dabang family of the village. Due to this reason, family of opposite party no. 2 is having enmity with the applicant's family, as such, opposite party no. 2 lodged NCR No. 0116 of 2023, under Section 323 IPC implicating all family members of the applicant. It is alleged in the NCR that on 04.09.2022 at about 7:30 P.M., accused persons assaulted the son of complainant, Sudhir and when his wife came to protect him, she was also beaten and both the injured were brought to C.H.C., Nagina by the police party. Injured persons received seven injuries caused by sharp edged weapon. Injury no. 4 was advised for X-ray, thereafter, the same was found grievous in nature. After 14 days of alleged incident, NCR was converted in police case as Case Crime No. 0312 of 2022, under Sections 323, 325 IPC. It is next argued by learned counsel for the applicant that the NCR has been converted as police case without taking permission from the learned Magistrate as provided under Section 155(2) Cr.P.C., thereafter, I.O. conducted investigation and submitted charge-sheet under aforesaid sections. He next argued that the whole proceedings initiated against the applicant are illegal and without following the due procedure prescribed under Section 155(2) Cr.P.C. In support of his submissions learned counsel for the applicant has placed reliance over the judgment dated 11.08.2022 passed by the Co-ordinate Bench of this Court in Application U/S 482 No. 24962 of 2021 (Shivam Solanki V/s State of U.P. and Another), in which, Co-ordinate Bench of this Court has held that statutory safeguards as provided under Section 155(2) of Cr.P.C. has not been followed and the testimony of the victim was not of sterling quality to believe the allegations made against the applicant, therefore, the entire proceedings is liable to be quashed.

4. Per contra, learned A.G.A. for the State vehemently opposed the submissions raised by learned counsel for the applicant and submitted that from the contents of NCR, it is apparent that injured were beaten by the accused persons and injuries are found grievous in nature, therefore, NCR has been converted in police case and no permission of Magistrate Under Section 155(2) Cr.P.C. is required if injury discloses grievous in nature. Further, injured were brought to hospital by the constable. Learned A.G.A. has placed reliance over the judgments of Co-ordinate Bench of this Court in Application U/S 482 No. 38936 of 2019 (Shavez And 2 Others Vs. State of U.P. and Another) and in Dharam Pal and Ors Vs. State of Uttar Pradesh and Ors., 2006 (54) ACC 811.

5. Considered the submissions raised by learned counsel for the parties and perused the entire record. The legal question raised by learned counsel for the applicant is that without taking permission of learned Magistrate as provided under Section 155(2) Cr.P.C., NCR has been converted in police case. Main contention of the learned counsel for the applicant that the investigation done by the Investigating Officer was unauthorized as it was not a cognizable offence and in view of Section 155 Cr.P.C., the investigation could not have been initiated in the case without any order of the Magistrate, who had power to try the case or commit it for trial. On perusal of record, it is apparent that injured were immediately brought to the hospital and medically examined and injuries received by the injured were found grievous in nature, as such, ingredients of Sections 323, 324 & 325 IPC were found, thereafter, NCR was converted into police case as Case Crime No. 312 of 2022. The act of the applicant in regard to assault, as a result of which, injured persons received injuries, which are found grievous in nature, constitute cognizable offence, therefore, the said NCR has been converted into present FIR. The conversion of NCR into cognizable report that is FIR on the basis of material collected during investigation, cannot be turned as illegal if injuries are found

grievous in nature. Further, not taking permission from the learned Magistrate in view of Section 155(2) Cr.P.C. is only a mere irregularity in the investigation and the charge-sheet on this account, cannot be rendered illegal. The Co-ordinate Bench of this Court in Dharam Pal (Supra) has held that irregularity of police officer in not being empowered to investigate case, is not one of irregularities mentioned in Section 461 Cr.P.C. which vitiates proceedings and moreover in Section 460(b), it is even provided that if any Magistrate not empowered by law orders, under Section 155 Cr.P.C., the police to investigate an offence, then the irregularity does not vitiate the proceedings. Further, the Co-ordinate Bench in Shavez (Supra) has held that conversion of NCR into FIR during investigation after finding the fact that the accused persons had caused serious injuries to victim and had thereby committed cognizable offence, is neither illegal nor impermissible. In the present case, Investigating Officer has also found that injuries received by the injured are grievous in nature, as such, the NCR converted into FIR and charge-sheet has been submitted. Other submissions raised by learned counsel for the applicant are disputed questions of facts which cannot be considered and examined at this stage by this Court in exercise of power under Section 482 Cr.P.C. No interference is warranted.

6. The grounds taken in the application reveal that many of them relate to disputed question of fact. This Court is of the view that it is well settled that the appreciation of evidence is a function of the trial court. This Court in exercise of power under Section 482 Cr.P.C. cannot assume such jurisdiction and put an end to the process of trial provided under the law. It is also settled by the Apex Court in catena of judgments that the impugned criminal proceeding against the applicants is abuse of the process of the Court and is liable to be quashed by this Court. The power under Section 482 Cr.P.C. at pre-trial stage should not be used in a routine manner but it has to be used sparingly, only in such an appropriate cases, where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceedings or where allegations made in First Information Report or charge-sheet and the materials relied in support of same, on taking their face value and accepting in their entirety do not disclose the commission of any offence against the accused. The disputed questions of facts and defence of the accused cannot be taken into consideration at this pre-trial stage.

7. In view of the above, in the light of judgment of the Apex Court in the matters of R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, Manik B. Vs. Kadapala Sreyes Reddy & Anr. 2023 LiveLaw (SC) 642, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P.Sharma, 1992 SCC (Cr.) 192 and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283, no ground for quashing the proceedings of the aforesaid case, is made out which may call for any interference by this Court in exercise of its inherent power under Section 482 Cr.P.C. as the same do not suffer from any illegality or infirmity.

8. The present application under Section 482 Cr.P.C. lacks merit and is, accordingly, dismissed.

Order Date :- 30.4.2025 Aditya