Naubahar And Another vs State Of U.P. And Another on 23 April, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:61697

Court No. - 73

Case :- APPLICATION U/S 482 No. - 32258 of 2024

Applicant :- Naubahar And Another

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

Counsel for Applicant :- Pankaj Sharma,Prashant Sharma

Counsel for Opposite Party :- Akhilesh Kumar Singh,G.A.

Hon'ble Vikas Budhwar,J.

1. Heard Shri Prashant Sharma, counsel for the applicants who are two in number and Sri S.K. Singh, learned AGA for the State as well as Shri Neeraj Kumar Pandey, counsel for opposite party no. 2.

2. The counsel for the rival parties have made a joint statement that they do not propose to file any further affidavits, thus, with the consent of the parties, the application is being decided at the fresh stage.

3. The case of the applicants is that a complaint was lodged by the opposite party no. 2 against the applicants who are two in number on 13.10.2023 with an allegation that the house of the father of the applicants herein is just adjacent to the house of the opposite party no. 2 and as per the allegations in the complaint, the father of the applicants is a cruel person, quarrelsome and quite clever. Allegation is to the effect that one-Sheela who was an aged widow was possessed with a piece

of land and since the husband of the complainant used to take care, so she had by virtue of a will bequeathed the piece of land to the husband of the opposite party no. 2, however, the father of the applicant nos. 1 and 2 wanted to claim its share and so he planted the applicant no. 2 being the son as a foster child and in order to harass the opposite party no. 2 and the family including the husband-Jitendra, a first information report bearing no. 183 of 2004, under Sections 420, 467 IPC was lodged. Since nothing proceeded in the said first information report so in the year 2016, it is alleged that the father of the applicants through his minor daughter got lodged a criminal proceedings against the nephew of the opposite party no. 2 and his son-Komal being FIR no. 131 of 2016 under Section 351 IPC and in order to again inflict criminality, a first information report was also stood lodged being FIR No. 260 of 2016, under Sections 354 and 504, 506 IPC against the applicants. It is also alleged in the complaint that on 12.05.2023 at about 8.45 hours in the morning, the applicants herein barged into the house of the opposite party no. 2 and thereafter proceeded to extend indecent gesture and proceeded to exhibit objectionable and obscene behaviour. On top of it, applicant no. 1 had beaten up the minor daughter of the opposite party no. 2 and the applicant no. 2 who was just standing on the door started urinating and making obscene gestures. On account of hue and cry raised by the victim, the sister of the victim who was somewhere near came for rescue and then the applicants threatened the victim and her sister and thereafter when the complainant returned to her house at 10.00 then the entire incident was narrated to her and it is also alleged that attempts were being made for lodging of the first information report followed by registered complaint being sent to registered letter and then proceedings under Section 156 (3) Cr.P.C.

4. Learned counsel for the applicants submits that the applicants have been summoned under Sections 452 and 354 IPC read with Section 7/8 of the POCSO Act on the basis of the statement of the complainant under Section 200 Cr.P.C. and of the victim under Section 202 Cr.P.C. of the sister-Deepa.

5. Submission is that the entire story has been planted in such a manner so as to harass the applicants in view of the intervening facts that there happens to be lodging of multiple criminal proceedings against the opposite party no. 2- faction by the applicants- faction. Argument is that no such incident occurred and there is nothing on record which could depict that there happens to be any such incident. It is also contended that in the complaint, the time of the incident is 8.45, however, in the statement of the complainant, it is shown to be 8.15 and whereas there is also variation in the statement of the victim. He thus submits that it is a classic case of victimization and malicious prosecution and, thus, the summoning order be set aside.

6. Shri Neeraj Kumar Pandey who appears for opposite party no. 2 while countering the submission so sought to be made by the learned counsel for the applicants submits that this Court may not come to the rescue of the applicants, particularly, in view of the magnitude and the gravity of the offences sought to be alleged and further when there is no major inconsistency or variance in the statements of witnesses under Sections 200 and 202 Cr.P.C. viz-a-viz the complaint. He submits that whatever arguments are sought to be made, they are attributable and liable to be raised at the time of trial and not at this stage.

7. Shri S.K. Singh, learned AGA has supported the arguments of counsel for the opposite party no. 2. According to him, summoning order cannot be said to be vitiated in any manner whatsoever and moreover trial cannot be throttled on the basis of the tenability of the arguments of the learned counsel for the applicants as noticed above.

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

9. The sole question which arises for determination in the present proceedings is to the extent of judicial intervention. Pertinently, in the present case, the Court is occasioned to scrutinize the validity of the summoning order. There are certain criteria which have been adhered too while summoning the accused. One of the major criteria would be the nature of the allegations in the complaint viz-a-viz the statements of the witnesses under Sections 200 and 202 Cr.P.C. The Magistrate at the stage of the summoning is not required to go into the defence of the accused but it has to in the fact situation evaluate and the prima facie convinced that the case is triable. Applying the said broad para-meters in the facts of the case what would be relevant, would be the nature of the allegations in the complaint viz-a-viz the statements under Sections 200 and 202 Cr.P.C. Apparently, the allegations are referable to an attempt of molestation and attempt to outrage the modesty while attracting the provisions under Sections 452 and 354 IPC read with Section 7/8 POCSO Act. The allegations are referable to barging into the house of the complainant whereat the victim was there and to catch hold of her exhibiting indecent behaviour and making obscene gesture at the end of the applicant no. 1 and also committing of the offence of urinating in front of the victim. The statement of the complainant also does not rule out the occurrence regarding the commission of the offence and so much so the victim on top of it has deposed about the commission of the said offence and so far as the sister of the victim, she has also not ruled out that the offence has not been committed. Moreover though, it has been sought to be argued that the complaint resides that the time of the occurrence was 8.45 in the morning, whereas the statement of the complainant depicts 8.15 in the morning thus the same would erode the prosecution theory is not convincing at this stage particularly, when here it is not the case of the parties that the incident occurred in a city but from the allegations and the records, the incident took place in her rural area, where the complainant from her deposition was even not able to recollect the date. In normal parlance, the principles and the para-meters which are applicable to urban areas cannot be applied in toto without considering the overall aspects of the matter. So far as the arguments sought to be raised by the learned counsel for the applicants that criminal proceedings have been lodged which are several in number by the applicants faction against the opposite party no.2 faction and the same became a motivating factor for lodging of the criminal complaint while inflicting criminality is concerned and the same is nothing but grocess misuse of process of law is concerned, the same at best can be said to be a defence, particularly, when it might be a factor at the time when the trial commences for the purposes of determining and considering as to whether it is a case of conviction or acquittal.

10. This Court at this juncture is not required to go into defences. There is another facet of the matter i.e. Section 29 of the POCSO Act being presumption to certain offences, according to which, where a person is prosecuted for committing or abating or attempting to commit any offence under Sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has

committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved. The words employed by the legislature "the contrary to be proved is of relevance, thus, it cannot be ruled out that trial is not to be conducted".

11. Nonetheless, the Hon'ble Apex Court 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;
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> ii) Courts would not thwart any investigation into the cognizable offences;
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> 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;
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> 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).
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> 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;
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> vi) Criminal proceedings ought not to be scuttled at the initial stage;
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> vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;
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> 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;
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> ix) The functions of the judiciary and the police are complementary, not overlapping;
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> 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;
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> 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.
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> 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."

12. Accordingly, I find no good ground to invoke inherent jurisdiction under Section 482 of the Cr.P.C. while quashing the criminal proceedings. Resultantly, the application is dismissed.

13. Needless to point out that passing of this order may not be construed to be any expressions on the merits of the matter as it is open for the trial court to proceed with the matter and to decide the same strictly in accordance with law with utmost expedition.

Order Date :- 23.4.2025 A. Prajapati