Arman vs State Of U.P. And 3 Others on 29 April, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:66324

Court No. - 73

Case :- APPLICATION U/S 482 No. - 1290 of 2025

Applicant :- Arman

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Ansar Ahmad

Counsel for Opposite Party :- Abhishek Kumar Shukla,G.A.,Ram Ashish Pandey

Hon'ble Vikas Budhwar,J.

1. Heard Sri Ansar Ahmad, learned counsel for the applicant as well as Sri Indrajeet Singh Yadav, learned AGA for the State and Sri Ram Ashish Pandey for the opposite party no. 2.

2. This application u/s 482 of Cr.P.C. has been preferred for quashing the impugned summoning order dated 17.10.2024 passed by the Learned special judge (POCSO Act) / Additional session judge Act Etawah District Etawah as well as entire proceeding of complaint case no 748 of 2024 under section 376/506 I.P.C and 1/4 POCSO Act Police station Bakewar District Etawah Pending in the court of special judge (POCSO Act)/Additional session judge Act Etawah, District Etawah.

3. A joint statement has been made by the learned counsel for the parties that they do not propose to file any affidavits and the application be decided on the basis of the documents available on record. With the consent of the parties, the application is being decided at the fresh stage.

4. Learned counsel for the applicant has submitted that a complaint was lodged by the opposite party no. 2 on 20.06.2024 with an allegation that the opposite party no. 2 is aged about 16 years and

minor and she came in touch with the applicant on 03.12.2021 and on 12.12.2021 at about 12:00 when the opposite party no. 2 was all alone in the house then the applicant along with one of his friend had come to the house of the opposite party no. 2 and offered a cold drink which, as per the allegation in the complaint, was containing intoxicating articles and he forced the opposite party no. 2 to drink the same and after consuming the cold drink, the opposite party no. 2 is alleged to have become unconscious and bad act was committed and her modesty was outraged. It is also alleged in the complaint that the said incident was recorded through a mobile phone and the opposite party no. 2 was blackmailed and she was continuously pressurized and forced to be subjected to a position where she has to offer herself to the applicant. The complaint further alleged that when the applicant being frustrated with the said facts, apprised her parents and brother then they had gone to the house of the father of the applicant who on 04.04.2024 maltreated them and also by way of a auto riksha attempted to get the road accident done and further the allegation in the complaint is that a demand of Rs. 1,00,000/- was made by the applicant from the opposite party no. 2 to conceal the things so that, they may not be disclosed in public. On the basis of the statement of the victim/complainant, the brother of the victim, the father of the victim under Section 200 and 202 Cr.P.C., the applicant has been summoned on 17.10.2024 by the Court of Special Judge, POCSO Court/Additional Sessions Judge, Etawah under Section 376, 506 IPC read with Section 3/4 of the POCSO Act.

5. Learned counsel for the applicant has submitted that the entire allegation sought to be levelled upon the applicant has no basis whatsoever as it was the sweet will of the opposite party no. 2 which became the basis of the relationship between them and there was no threat or force exerted for the same. He further submits that the entire allegations sought to be levelled are nothing but a bundle of lies just in order to exert pressure and extract the money from the applicant as to the converse false and incorrect story has been implanted that it is the applicant who was demanding the money. He further submits that the applicant was even agreeable to marry with the opposite party no. 2 but he submits that in view of the photographs of the opposite party no. 2 along with somebody else in an objectionable condition, it is not possible for the applicant to solemnize marriage with the opposite party no. 2. He seeks to rely upon Annexure-6 at page 39 of the paper book being a compromise so entered into between the parties, however, the same is also not being honored as the opposite party no. 2 has resiled from the same. He, thus, submits that none of the ingredients for attracting the provisions of Section 376 and 506 IPC read with Section 3/4 of the POCSO Act stands applicable or attracted. Lastly, it has been submitted that the summoning order has been passed in a routine manner on mere asking without application of mind.

6. Sri Pandey who appears for the opposite party no. 2 while countering the submission of the learned counsel for the applicant submits that the summoning order cannot be faulted in any manner whatsoever for the simple reason, the same has taken into account the deposition under Section 200 and 202 Cr.P.C. and prima facie being satisfied that the penal provisions are attracted, the applicant has been summoned. He further submits that once plainly and simply the statements of the witnesses are in conformity and in consonance with the complainants then this Court may not be come to the rescue in the present proceedings.

7. Learned AGA has adopted the argument of the counsel for the opposite party no. 2 and he submits that the summoning order is perfectly valid in accordance with law.

8. I have heard the learned counsel for the parties and perused the record carefully.

9. In the present case in hand at the instance of the applicant, the order dated 17.10.2024 passed by the court below summoning the applicant under Section 376 and 506 IPC read with Section 3/4 of the POCSO Act is under challenge. In order to determine as to whether the summoning order is valid or not there are certain broad principles which had to be adhered to. One of them is the allegations made in the complaint vis-a-vis the depositions made under Section 200 and 202 of the Cr.P.C. In case, prima facie offences are made out from the statement of witnesses under Section 200 and 202 Cr.P.C. as well as from the complaint then the Court in normal course would be reluctant in interfering, of course, once there happens to be certain glaring facts which attribute towards intervention under inherent jurisdiction can be made.

10. Here, in the present case, the complainant/victim happens to be aged about 16 years and she had pin pointed allegations of outraging of modesty/bad act upon the applicant. The complaint further alleges that the said bad act was committed more than once and the applicant used to blackmail her and demand Rs. 1,00,000/- for either deleting the videos or not making it viral. The statement of the brother of the opposite party no. 2, father on top of it of the victim herself are in conformity and in consonance with the allegations was made in the complaint. The court below while summoning the applicant had accorded its satisfactions that prima facie the case is triable and thereafter summoned the applicant. So far as the contention so sought to be raised upon the alleged compromise being entered into between the parties is concerned, the same is not liable to be considered at this stage particularly when pin pointed direct allegations are there. These are the matters which may not be taken into consideration at the stage of summoning.

11. There is another facet of the matter that Section 29 of the Prevention of Children for Sexual Offences Act, 2012, deals with the presumption as to certain offences, according to which where a person is prosecuted for committing or abetting or attempting to commit any offence under Sections, 3, 5, 7 and 9 of the Act, the Special Court shall presume that such person has committed or abetted or attempted to commit the offences, as the case may be, unless the contrary is proved. The words employed by the legislature 'unless contrary is proved' assumes significance which pre-supposes in a given case a trial.

12. The Hon?ble Apex Court in M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others, AIR 2021 SC 1918 had the occasion to consider the ambit and the extent of intervention under Article 482 Cr.P.C. wherein it was observed as under:-

> ?23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or ?no coercive steps to be adopted?, during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the

High Court would be justified in passing the order of not to arrest the accused or ?no coercive steps to be adopted? during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article of the Constitution of India, our final conclusions are as under:

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.?

13. Here, in the present case, there is nothing to show that there is any exception in the case of the applicant.

14. Cumulatively analysing the case from four corners of law, no good ground is made out for invoking inherent jurisdiction under Section 528 of BNSS for quashing the proceedings that too in absence of pointing out of any jurisdictional infirmity.

15. Resultantly, the application is dismissed.

Order Date :- 29.4.2025 Rajesh