

Umesh Aggarwal And 2 Others vs State Of U.P. And Another on 30 April, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:67392

Court No. - 87

Case :- APPLICATION U/S 482 No. - 33449 of 2024

Applicant :- Umesh Aggarwal And 2 Others

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

Counsel for Applicant :- Abhishek Tripathi, Mohd. Asim Zulfiquar

Counsel for Opposite Party :- G.A.

Hon'ble Prashant Kumar, J.

1. Heard Sri Abhishek Tripathi, learned counsel for the applicants, Sri S.D. Pandey, learned A.G.A. for the State-O.P. no.1 and perused the record.
2. The present application under Section 482 Cr.P.C. has been filed by the applicants praying for quashing summoning order dated 29.04.2024 as well as entire proceedings of Complaint Case no.25437 of 2023 (Smt. Anjana Saxena vs. Arun Bansal and others) u/s 406 IPC, P.S. Majhaura, District-Moradabad pending in the Court of Additional Chief Judicial Magistrate, Court No.6, Moradabad.
3. Learned counsel for the applicants submitted that a complaint was lodged by O.P. no.2 claiming himself as super stockist of Dwarika Food Products. He further submitted that applicant no.1 is RSM, applicant no.2 is Managing Director and applicant no.3 is General Manager of the accused company. He next submitted that as per allegations of the complaint, husband of complainant/O.P.

no.2 had purchased goods worth ₹3,78,759/- on 13.11.2021 from the Dwarika Food Products. He was diagnosed with cancer, so he requested the applicants for payment for the goods. It is further alleged that the applicants requested the husband of O.P. no.2 to transfer the remaining goods to A.P. Agencies on his behalf. On the behest of the applicants goods worth ₹1,98,000/- were delivered to A.P. Agencies, however, payment of only ₹60,000/- has been made by the proprietor of the said Agency and the rest amount is still outstanding. He further submitted that husband of O.P. no.2 has passed away. Learned counsel for the applicants submitted that the outstanding amount is due with proprietor of A.P. Agencies and the applicants has nothing to do with the said Agency. He submitted that the applicants have never committed any offence as alleged against them. Further submission is that in the instant matter dispute between the parties is purely civil in nature, which has been given criminal colour by O.P. no.2, which is pure abuse of process of law and the same is liable to be set aside.

4. Per contra, learned A.G.A. vehemently opposed the application and contended that it is only at the instance of the applicants that the goods were transferred to A.P. Agencies and the applicants have denied payment of money to O.P. no.2, who is a widow lady and in dire need of money. The applicants are trying to shift the blame/liability to another company to whom the product was passed on, on the behest of the applicants, and as such they have committed an offence u/s 406 IPC. It is further submitted that the Court below has rightly summoned the applicants and no interference is required by this Court in the impugned order as well as the on going proceedings.

5. From the perusal of material on record and looking into the facts of the case at this stage it cannot be said that no offence is made out against the applicants. All the submissions made at the bar relate to the disputed question of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C. At this stage only prima facie case is to be seen in the light of the law laid down by Supreme Court.

6. Hon'ble Supreme Court in the matter of State of Haryana Vs. Bhajan Lal 1992 Supp (1) SCC 335 has laid down the guidelines under which circumstances the Court should, in its inherent power, entertain an application under Section 482 Cr.P.C. The guidelines are as follows:-

"(i) 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.

(ii) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable 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.

(iii) 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.

(iv) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(v) 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.

(vi) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (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 Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(vii) Where a criminal proceeding is manifestly attended with mala fides 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."

7. Further, the Hon'ble Supreme Court in the cases of M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra, AIR 2021 SC 1918, R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, 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 has held that only those cases in which no prima facie case is made out can be considered in an application under Section 482 Cr.P.C.

8. The instant application does not fall under the guidelines laid down by the Hon'ble Supreme Court in the judgments mentioned above, and followed in a number of matters. Moreover, the facts as alleged cannot be said that, prima facie, no offence is made out against the applicants. It is only after the evidence and trial, it can be seen as to whether the offence, as alleged, has been committed or not.

9. Hence, the instant application filed under Section 482 Cr.P.C. cannot be entertained and is, accordingly, dismissed.

Order Date :- 30.4.2025 Manish Himwan