

CENTRAL BUREAU OF INVESTIGATION

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v.

ARYAN SINGH ETC.

(Criminal Appeal Nos. 1025-1026 / 2023)

APRIL 10, 2023

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[M. R. SHAH AND C. T. RAVIKUMAR, JJ.]

Code of Criminal Procedure, 1973: s. 482 – Saving of inherent powers of the High Court – Accused chargesheeted, on conclusion of the investigations by the CBI – Discharge applications by the two accused – Dismissed by the trial court, and thereafter, the High Court quashed the entire criminal proceedings in exercise of the powers u/s. 482 – On appeal, held: High Court exceeded in its jurisdiction in quashing the entire criminal proceedings in exercise of the limited powers u/s. 482 – At the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers u/s. 482, the Court is not required to conduct the mini trial, it has very limited jurisdiction – High Court in the judgment and order held that the charges against the accused are not proved – This is not the stage where prosecution/investigating agency are required to prove the charges – Charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency – Also, while exercising power u/s. 482 the High Court not required to consider whether the proceedings are malicious or not – Thus, the judgment and order passed by the High Court quashing the criminal proceedings against the accused is unsustainable and is quashed and set aside.

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 1025-1026 of 2023.

From the Judgment and Order dated 04.05.2022 of the High Court of Punjab & Haryana at Chandigarh in CRM-M Nos. 54107 of 2021 and 8233 of 2022.

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K M Nataraj, A.S.G., Vatsal Joshi, Sharath Nambiar, Ms. Sakshi Kakkar, Annirudh Sharma Ii, Arvind Kumar Sharma, Advs. for the Appellant.

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A Mahesh Jethmalani, R.P. Bhatt, Sr. Advs., Ajay Awasthi, Mugdha Pande, Wedo Khalo, Aditya Soni, Rajat Gautam, Harshit Sethi, Tushan Rawal, Saud Khan, Nikilesh Ramachandran, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

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1. Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Misc. Application Nos. 54107 of 2021 and 8233 of 2022 by which the High Court, in exercise of the powers under Section 482 Cr.P.C., has quashed the criminal proceedings of the FIR No. RC0512020S0001 dated 29.04.2020 registered at Police Station State Grime Branch, Chandigarh under Sections 452, 323, 365, 342, 186, 225, 506 and 120-B IPC (earlier registered as FIR No.195 dated 30.08.2014 under Sections 452, 323, 365, 342, 225, 186, 506, 120-B IPC at Police Station Phase-1, Mohali) as well as all the subsequent proceedings arising out of the same, the Central Bureau of Investigation (CBI) has preferred the present appeals.

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2. Shri K.M. Nataraj, learned ASG appearing on behalf of the CBI has vehemently submitted that pursuant to the directions issued by the Hon'ble High Court, investigation of the aforesaid was handed over to the CBI, pursuant to which the FIR in question was registered on 29.04.2020 at Police Station, Crime Branch, Chandigarh for the aforesaid offences.

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2.1 It is submitted that initially, the accused Aryan Singh was not named in the fresh FIR. However, thereafter, after conclusion of the investigation, the chargesheet came to be filed against the said Aryan Singh also and he has been included as one of the accused.

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2.2 It is submitted that thereafter both the accused Aryan Singh and Gautam Cheema filed discharge applications before the learned Trial Court, which came to be dismissed on merits. It is submitted that thereafter by the impugned judgment and order, in exercise of the powers under Section 482 Cr.P.C., the High Court has quashed the entire criminal proceedings, as if, the High Court was conducting a mini trial.

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2.3 It is vehemently submitted that in the facts and circumstances of the case, the High Court has exceeded in its jurisdiction while quashing the entire criminal proceedings against the accused Aryan Singh and

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Gautam Cheema. It is vehemently submitted that while quashing the criminal proceedings, the High Court has observed that the allegations / charges against the accused have not been proved and that the prosecution is malicious. It is submitted that at the stage of deciding the quashing petitions against the order passed by the learned Trial Court, refusing to discharge the accused, the High Court ought not to have considered and/or observed that the charges are not proved. It is submitted that the charges are required to be proved during the trial and on the basis of the evidence led. It is further submitted that even the High Court has materially erred in observing that the prosecution is malicious. It is submitted that the investigation was handed over to the CBI, pursuant to the directions issued by the High Court and, thereafter, after conclusion of the investigation, the accused came to be chargesheeted and therefore, the initiation of the criminal proceedings / proceedings cannot be said to be malicious. It is submitted that whether any criminal proceedings is malicious, is also required to be considered at the conclusion of the trial and not at this stage, namely, at the stage of exercise of powers under Section 482 Cr.P.C.

2.4 Number of submissions have been made on merits also by Shri Nataraj, learned ASG, however, for the reasons stated hereinabove, we are inclined to set aside the impugned common judgment and order passed by the High Court by relegating the accused to face the trial and thereafter the trial is to proceed against the accused, we are not considering the submissions made on behalf of the CBI as well as on behalf of the accused on merits.

3. Present appeals are vehemently opposed by Shri R.P. Bhatt, learned senior counsel appearing on behalf of the accused Aryan Singh and Shri Mahesh Jethmalani, learned senior counsel appearing on behalf of the accused Gautam Cheema.

3.1 Both the learned counsel appearing on behalf of the respective accused have made submissions on merits of the allegations made against each accused. However, all those submissions are the defences, which are required to be considered during the trial. Therefore, we are not elaborately dealing with and/or considering the submissions made on behalf of the CBI as well as the accused on merits on the allegations against the accused as any observation of this Court may affect either of the parties during the trial.

A 4. Having gone through the impugned common judgment and order passed by the High Court quashing the criminal proceedings and discharging the accused, we are of the opinion that the High Court has exceeded in its jurisdiction in quashing the entire criminal proceedings in exercise of the limited powers under Section 482 Cr.P.C. and/or in exercise of the powers under Article 226 of the Constitution of India.

B 4.1 From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr.P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution / investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution / investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr.P.C., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not”.

D 4.2 One another reason pointed by the High Court is that the initiation of the criminal proceedings / proceedings is malicious. At this stage, it is required to be noted that the investigation was handed over to the CBI pursuant to the directions issued by the High Court. That thereafter, on conclusion of the investigation, the accused persons have been chargesheeted. Therefore, the High Court has erred in observing at this stage that the initiation of the criminal proceedings / proceedings is malicious. Whether the criminal proceedings was/were malicious or not, is not required to be considered at this stage. The same is required to be considered at the conclusion of the trial. In any case, at this stage, what is required to be considered is a prima facie case and the material collected during the course of the investigation, which warranted the accused to be tried.

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5. In view of the above and for the reasons stated above, when the High Court has exceeded in its jurisdiction in quashing the entire criminal proceedings and applying the law laid down by this Court in catena of decisions on exercise of the powers at the stage of discharge and/or quashing the criminal proceedings, the impugned common judgment and order passed by the High Court quashing the criminal proceedings against the accused is unsustainable and the same deserves to be quashed and set aside.

5.1 In view of the above and for the reasons stated above, present appeals succeed. The impugned common judgment and order passed by the High Court quashing and setting aside the criminal proceedings against the accused Aryan Singh and Gautam Cheema is/are quashed and set aside. The accused to face the trial for which they are chargesheeted. However, it is observed that all the contentions and defences, which are available to the respective parties are kept open, to be considered by the learned Trial Court during the trial.

Considering the fact that the allegations in the FIR relates back to the year 2014 and as more than eight years have passed, we direct the learned Trial Court to conclude the trial at the earliest, but not later than 12 months from the date of the receipt of the present order. CBI to produce the present order before the concerned Magistrate at the earliest. All concerned are directed to cooperate with the learned Trial Court in concluding the trial within the time prescribed mentioned hereinabove.

Present appeals are allowed accordingly.