

The State Of Uttar Pradesh vs Akhil Sharda on 11 July, 2022

Author: M. R. Shah

Bench: B.V. Nagarathna, M. R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.840 of 2022

State of Uttar Pradesh & Anr. ...Appellants

Versus

Akhil Sharda & Ors. ...Respondents

With

CRIMINAL APPEAL NO.841 OF 2022

Sanjeet Jaiswal ...Appellant

Versus

State of Uttar Pradesh & Ors. ...Respondents

JUDGMENT

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 06.03.2020 passed by the High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in a Case under Sections 482/378/407 No.2005 of 2019 by which the High Court in exercise of powers under Section 482 Cr.P.C. has quashed the criminal proceedings arising out of FIR bearing Case Crime No.260 of 2018 lodged under Section 406, registered at PS – Husainganj, District – Lucknow, the State of U.P. as well as the original informant have preferred the present appeals.

2. The facts leading to the present appeals in a nutshell are as under:

For the sake of convenience, the parties are referred as per the cause title in Criminal Appeal No.840 of 2022 filed by the State of U.P. That the respondent no.4 herein M/s. United Breweries Limited is engaged in manufacture of sale of beer which is regulated and governed by the Excise Act and other relevant clause of the State. Respondent No.5 – M/s Beehive Alcoveb is the licenced Firm having F.L. 2B licence, engaged in the business of beer etc. by purchasing the goods from the company, Respondent No.5 □Sanjeet Jaiwal – original informant of FIR No.260 of 2018, Manager of the company – M/s Beehive Alcoveb. On 07.09.2018 at 7.56 p.m. respondent no.5 sent a demand order at 7.56 p.m. and on 11.09.2018 through e□mail for delivery of three trucks of beer to respondent No.4 – M/s United Breweries Limited and transferred a total sum of Rs.92,98,902/□to deliver two trucks in Lucknow and one in Varanasi. The Respondent no.4 directed its transporter SICAL Logistics Limited Company to arrange a vehicle and deliver goods to Respondent no.5/the informant. That in furtherance of the same, M/s. SICAL Logistics Limited Company contacted another transport company, who in turn, hired two trucks vide truck registration numbers UP□32HN/3209 and UP□32FN/8048 for delivery of consignment of respondent no.5/informant to Lucknow after obtaining transfer permit FL□36 from Excise Department. The trucks were enabled with GPS systems as maintained by the Excise Department Track and Trace policy. 2.1 The consignment of beer was dispatched on 11.09.2018 through the aforesaid two trucks. The GPS devices of both the trucks lost contact with GPS tracking agency on 13.09.2018 after 11.41 pm. On 13.09.2018 at about 16.40 hrs. when the transporter contacted through his mobile phone to driver Mukesh on his mobile phone, he was informed that the vehicles were standing near Junabganj, Lucknow at Chauhan Dhaba (outer area of Lucknow) due to “no entry”. It appears that thereafter neither the tracer could be contacted nor the vehicles could be traced. With no positive response from the supplier, respondent no.1 and the goods not being delivered though full payment was made and the goods being missing midway, respondent no.5 lodged the present FIR bearing Case Crime No.260 of 2018 for the offence under Sections 406 & 420 IPC. In the meantime, the Manager of M/s SICAL Logistic also lodged a separate FIR bearing Case Crime No.390 of 2018 under Sections 420 & 406 IPC PS Badalpur, Gautam Budha Nagar against two truck drivers and one unknown person. After the conclusion of the investigation, the Investigating Officer filed the charge□sheet against respondent no.5 in Case Crime No.26 of 2018 dated 10.02.2018 and thereafter the learned Magistrate passed the summoning order dated 13.02.2019. Even subsequently the Investigating Officer PS Badalpur has also filed the charge□sheet in the case arising out of Case Crime No.227 of 2019 PS – Banthra, District Lucknow (Old No.390 of 2018). Thereafter goods were delivered to the original informant. Also, respondent no.1 to respondent no.4 herein, accused in Criminal Case No.5694 of 2019 (arising out of FIR No.260 of 2018) approached the High Court by way of an application under Section 482 Cr.P.C. being Case Crime No.2005 of 2019 seeking the following main reliefs:

“(i) set aside the impugned summoning order dated 13.02.2019 passed in Criminal Case No. 5694/2019, Case Crime No. 0260/2018, under Section 406, 420, 467, 468, 471, 120 B I.P.C., Police Station Husainganj, district Lucknow.

(ii). set aside the impugned charge sheet dated 10.02.2019, filed by the Investigating Officer in Case Crime No. 0260/2018, under Section 406, 420, 467, 468, 471, 120 B I.P.C., Police Station Husainganj, District Lucknow.

(iii) set aside the entire proceedings of the Case Crime No. 0260/2018, under Section 406, 420, 467, 468, 471, 120 B I.P.C., Police Station Husainganj, District Lucknow.” 2.2 By the impugned judgment and order the High Court in exercise of powers under Section 482 Cr.P.C. has quashed the entire criminal proceedings including the charge sheet and the summoning order arising out of Criminal Case No.5694 of 2019 (arising out of Case Crime No.260 of 2018 PS – Husainganj, District – Lucknow).

2.3 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court quashing the criminal proceedings and the summoning order passed by the learned Trial Court in Criminal Case No.5694 of 2019 (arising out of Case Crime No.260 of 2018 PS – Husainganj, District – Lucknow), the State as well as the original informant have preferred the present appeals.

3. Ms. Aishwarya Bhati, learned ASG has appeared on behalf of the appellant State of UP and Dr. Abhishek Manu Singhvi, learned Senior Advocate has appeared on behalf of the original informant. Shri Ranjeet Kumar, learned Senior Advocate and Shri Sidharth Dave, learned Senior Advocate have appeared on behalf of the original accused.

4. Ms. Bhati, learned ASG and Dr. Singhvi, learned Senior Advocate appearing on behalf of the original informant have vehemently submitted that in the facts and circumstances of the case the High Court has committed a grave/serious error in quashing the entire criminal proceedings in exercise of powers under Section 482 Cr.P.C.

4.1 It is submitted on behalf of the State as well as the original informant that while passing the impugned judgment and order while quashing the criminal proceedings arising out of Case Crime No.260 of 2018 the High Court has not properly appreciated and/or considered the larger conspiracy. 4.2 It is submitted that the High Court has not appreciated and/or considered the fact that both the FIRs being Case Crime Nos.260 of 2018 and 227 of 2019 are interconnected and cannot be separated. It is submitted that the High Court ought not to have set aside the criminal proceedings arising out of one FIR being Case Crime No.260 of 2018. 4.3 It is submitted that the High Court has failed to note and/or appreciate the allegations in the FIR being FIR No.260 of 2018 which were relating to disappearances of trucks loaded with beer from highways in Uttar Pradesh which involve allegations of forging data and uploading incorrect data against the Respondent Accused.

4.4 It is further submitted that by passing the impugned judgment and order the High Court has curtailed and narrowed the scope of the investigation.

4.5 It is submitted that even the High Court agrees that the allegations are serious and require investigation. However, without a further prayer in that regard and at the instance of the accused, the High Court has transferred the investigation to CB[redacted]CID to investigate the FIR being FIR No.227 of 2019 lodged by the accused themselves.

4.6 It is further submitted that while passing the impugned judgment and order and quashing the criminal proceedings the High Court has not properly appreciated and considered various aspects of the case and the complicity of the accused have not been considered.

4.7 It is submitted that two whole trucks loaded with beer went missing and the beer bottles was not found. There was no recovery or seizure of the goods concerned. It had come during investigation that there were other such instances of disappearance of trucks loaded with beer bottles. It is submitted that there is a syndicate operating with the connivance of the accused persons.

4.8 It is submitted that the manner in which the trucks loaded with beer bottles went missing and the modus operandi adopted, in such a serious matter but the High Court has quashed the criminal proceedings; that the High Court has exceeded its jurisdiction while exercising the powers under Section 482 Cr.P.C.

4.9 It is submitted that while quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C. the High Court has conducted a mini trial which as such is not permissible while exercising the powers under Section 482 Cr.P.C.

4.10 Learned Counsel appearing on behalf of the respective appellants have heavily relied upon the following decisions of this Court in support of their above submissions and the prayer to quash and set aside the impugned judgment and order.

(i) Odisha vs. Pratima Mohanty, 2021 SCC Online SC 1222 [paras 14, 15, 16, 18 & 22]

(ii) CBI vs. Thommandru, 2021 SCC Online SC 923

(iii) Rajeev Kourav vs. Baisahab, (2020) 3 SCC 317

(iv) Neeharika Infrastructure vs. Maharashtra, 2021 SCC Online SC 315

(v) Rajiv Thapar vs. Madan Lal Kapoor, (2013) 3 SCC

330.

(vi) Divine Retreat vs. Kerala, (2008) 3 SCC 542. 4.11 It is further submitted by learned counsel appearing on behalf of the appellants that in the present case the High Court delivered the judgment

after a period of six months from the date it was reserved for judgment. Therefore, the impugned judgment and order passed by the High Court deserves to be quashed and set aside. Reliance is placed in the decision of this Court in the case of Anil Rai vs. State of Bihar, (2001) 7 SCC 318.

Making the above submissions and relying upon the above decisions it is prayed to allow the present appeals and quash and set aside the impugned judgment and order passed by the High Court quashing and setting aside the criminal proceedings arising out of FIR bearing Case Crime No.260 of 2018 lodged under Section 406, registered at PS – Husainganj, District – Lucknow.

5. Both these appeals are vehemently opposed by Shri Ranjeet Kumar, learned Senior Advocate and Shri Sidhartha Dave, learned Senior Advocate appearing on behalf of the respective accused.

5.1 Learned counsel appearing on behalf of the original accused have vehemently submitted that in the facts and circumstances of the case and after having satisfied that the ingredients of Sections 406, 420 IPC are not made out and the case falls within the parameters laid down by this Hon'ble Court in the case of Ch. Bhajan Lal vs. State of Haryana 1992 Supp (1) SCC 335 which are required to be considered while quashing the criminal proceedings, the Hon'ble High Court has not committed any error in quashing and setting aside the criminal proceedings.

5.2 It is submitted that as such the respondents herein □original accused are not at all in anyway responsible for the missing of the trucks loaded with beer after the same were dispatched from their company. It is submitted that in fact the respondents – original accused delivered the goods to the transporter namely SICAL Logistic and in turn hired two trucks. It is submitted that it was the SICAL Logistic who arranged the vehicles to deliver goods to the informant. It is submitted that thereafter the goods have been delivered. It is also found by the High Court that there was no loss caused to the Excise Department. It is submitted that the main grievance/dispute by the informant was with respect to the rebate and therefore with a mala fide intention, the FIR was lodged. That so far as the rebate is concerned, no allegation was made in the FIR. Therefore, in the facts and circumstances of the case the High Court has not committed any error in quashing and setting aside the criminal proceedings, as it was nothing but an abuse of process of law. Relying upon the decision of this Court in the case of Ch. Bhajan Lal (supra); Indian Oil Corporation vs. N.E.P.C. India Ltd. and others□reported in (2006) 6 SCC 736; Rajiv Thapar (supra) and Jetking Infotrain Ltd. vs. State of U.P., (2015) 11 SCC 730., it is prayed to dismiss the present appeals.

6. We have heard learned counsel for the respective parties at length.

6.1 At the outset, it is required to be noted that by the impugned judgment and order the High Court in exercise of powers under Section 482 Cr.P.C. has quashed the criminal proceedings arising out of FIR bearing Case Crime No.260 of 2018 including the charge□sheet filed by the Investigating Agency as well as the summoning order passed by the learned Trial Court.

6.2 At the outset, it is required to be noted that the High Court has delivered the impugned judgment and order after a period of six months after the matter was reserved for judgment. Though the judgment and order passed by the High Court may not be set aside on the aforesaid ground only,

however it is always advisable that the High Court delivers the judgment at the earliest after the arguments are concluded and the judgment is reserved. While emphasizing the need to pronounce the reserved judgment at the earliest and within a reasonable time this Court in the case of Anil Rai (supra) has observed and held in para 9 as under:

“9. It is true, that for the High Courts, no period for pronouncement of judgment is contemplated either under the Civil Procedure Code or the Criminal Procedure Code, but as the pronouncement of the judgment is a part of the justice dispensation system, it has to be without delay. In a country like ours where people consider the Judges only second to God, efforts be made to strengthen that belief of the common man. Delay in disposal of the cases facilitates the people to raise eyebrows, sometimes genuinely which, if not checked, may shake the confidence of the people in the judicial system. A time has come when the judiciary itself has to assert for preserving its stature, respect and regards for the attainment of the rule of law. For the fault of a few, the glorious and glittering name of the judiciary cannot be permitted to be made ugly. It is the policy and purpose of law, to have speedy justice for which efforts are required to be made to come up to the expectation of the society of ensuring speedy, untainted and unpolluted justice.” In the aforesaid decision this Court has also taken note of the observations made by this Court in another case in the case of Bhagwandas Fatechand Daswani and Ors. vs. HPA International and Ors., (2000) 2 SCC 13 that “a long delay in delivery of the judgment gives rise to unnecessary speculations in the minds of the parties in a case”.

7. Having gone through the impugned judgment and order passed by the High Court by which the High Court has set aside the criminal proceedings in exercise of powers under Section 482 Cr.P.C., it appears that the High Court has virtually conducted a mini trial, which as such is not permissible at this stage and while deciding the application under Section 482 Cr.P.C. As observed and held by this Court in a catena of decisions no mini trial can be conducted by the High Court in exercise of powers under Section 482 Cr.P.C. jurisdiction and at the stage of deciding the application under Section 482 Cr.P.C., the High Court cannot get into appreciation of evidence of the particular case being considered.

(See Pratima (supra); Thom (supra); Rajiv (supra) and Niharika (supra)).

7.1 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and the manner in which the High Court has allowed the petition under Section 482 Cr.P.C., we are of the opinion that the impugned judgment and order passed by the High Court quashing the criminal proceedings is unsustainable. The High Court has exceeded in its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C. 7.2 It is also required to be noted that even the High Court itself has opined that the allegations are very serious and it requires further investigation and that is why the High Court has directed to conduct the investigation by CB-CID with respect to the FIR No.227 of 2019. However, while directing the CB-CID to conduct further investigation/investigation, the High Court has restricted the scope of investigation. The High Court has not appreciated and considered the fact that both the FIRs namely FIR Nos.260 of

2018 and 227 of 2019 can be said to be interconnected and the allegations of a larger conspiracy are required to be investigated. It is alleged that the overall allegations are disappearance of the trucks transporting the beer/contraband goods which are subject to the rules and regulations of the Excise Department and Excise Law.

7.3 The High Court has quashed the criminal proceedings by observing that there was no loss to the Excise Department. However, the High Court has not at all appreciated the allegations of the larger conspiracy. The FIR need not be an encyclopedia (See Satpal vs. Haryana, (2018) 6 SCC 110 Para 7).

7.4 Even otherwise, it is required to be noted that the allegation of missing of two trucks was the beginning of the investigation and when during the investigation it was alleged that earlier also a number of trucks were missing transporting contraband goods, the FIR should not have been restricted to missing of the two trucks only and return of on the goods thereafter. The High Court has not at all appreciated and/or considered the allegation of the larger conspiracy and that both the FIRs/criminal cases are interconnected and part of the main conspiracy which is very serious if found to be true. We however refrain from making any further observations as at this stage of proceedings as we are at the stage of deciding the application under Section 482 Cr.P.C. only and as the trial of both the cases have yet to take place. Therefore, we refrain from making any further observations which may affect the case of the either of the parties. Suffice it to say and mention that in the facts and circumstances of the case the High Court has committed a grave/serious error in quashing and setting aside the criminal proceedings arising out of Criminal Case No.5694 of 2019 and Case Crime No.260 of 2018 PS lodged under Section 406, registered at PS – Husainganj, District – Lucknow.

8. In view of the above and for the reason stated above both these Appeals Succeed. The impugned judgment and order passed by the High Court is hereby quashed and set aside to the extent quashing and setting aside the criminal proceedings Criminal Case No.5694 of 2019 arising out of Case Crime No.260 of 2018 PS lodged under Section 406, registered at PS – Husainganj, District – Lucknow. The proceedings before the learned Trial Court in Criminal Case No.5694 of 2019 are ordered to be restored to file. Present Appeals are accordingly Allowed to the aforesaid extent.

.....J. (M. R. SHAH)J. (B.V. NAGARATHNA) New
Delhi, July 11, 2022.