

Ankit Gupta vs State Of U.P. And Anr on 11 October, 2018

Equivalent citations: AIRONLINE 2018 ALL 4920

Author: Karuna Nand Bajpayee

Bench: Karuna Nand Bajpayee

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. - 48

Case :- APPLICATION U/S 482 No. - 34325 of 2018

Applicant :- Ankit Gupta

Opposite Party :- State Of U.P. And Anr

Counsel for Applicant :- Vivek Kumar, Aditya Bhushan Singhal

Counsel for Opposite Party :- G.A.

Hon'ble Karuna Nand Bajpayee, J.

This criminal misc. application has been preferred by the applicant- Ankit Gupta with the prayer to quash the impugned charge sheet dated 11.8.2017 under Sections 419, 420, 406 I.P.C., P.S.- Civil Lines, District- Allahabad as well as proceedings in Case No. 2314 of 2018, State vs. Ashutosh Ojha and others, and all consequential orders passed therein arising out of Case Crime No. 725 of 2014, under Sections 419, 420, 406 I.P.C., P.S.- Civil Lines, District- Allahabad, pending in the court of C.J.M., Allahabad so far it relates to the applicant.

Heard applicant's counsel and learned AGA.

Entire record has been perused.

Submission on behalf of the present applicant is that he was merely a Branch Manager at one point of time in the said fraudulent company and had initially worked at Manjhanpur Kaushambi and thereafter he was transferred to Central Plaza Allahabad as Branch Manager. Further submission is that having discovered the shady nature of company affairs and lack of transparency in its business dealings the applicant resigned from his job on 5.9.2013 and since then he has not concerned himself with the said company. It was further urged by the counsel that the perusal of the statement of the opposite party no. 2 and other witnesses show contradictions and hence shadow of doubt appears on the entire prosecution story. Argument is that during his tenure as Branch Manager, the applicant had no interaction with the opposite party no. 2 and the money investment procedure was out of the purview of the present applicant and was being looked after by the other agents and superior officers of the company and hence, no offence against the applicant is made out as it cannot be said for certain that the applicant himself allured the public to fall in the trap which eventually caused to the people the huge wrongful loss. According to the counsel there is no such material in the case diary which may substantiate the charge levelled against him. Certain other contentions have also been raised by the applicant's counsel which relate to disputed questions of fact. The court has also been called upon to adjudge the testimonial worth of prosecution evidence and evaluate the same on the basis of various intricacies of factual details which have been touched upon by the learned counsel. The veracity and credibility of material furnished on behalf of the prosecution has been questioned and false implication has been pleaded.

Per contra, learned A.G.A. opposed the submission made on behalf of the applicant and submitted that the matter relates to the cheating of innocent people, who were made investors on deceitfully false assurances extended by the accused persons and a large number of people were defrauded. It has been further submitted that the alleged contradiction in statements recorded by the investigating officer is no ground to quash the chargesheet or the order of cognizance or the proceedings of the criminal case and considering the materials available in the case diary no interference by this Court is required as it is a multiple crore scam and the guilty culprits must be brought to justice. Learned A.G.A. also tried to point out that another Bench of this Court in the matter of co-accused has already refused to exercise its inherent power to interfere in the proceedings vide order dated 27.4.2018 passed on Application U/S 482 No. 14609 of 2018, Kamal Mehrotra vs. State of U.P. and another.

Considered the rival submissions raised at the Bar.

The law regarding sufficiency of material which may justify the summoning of accused and also the court's decision to proceed against him in a given case is well settled. The court has to eschew itself from embarking upon a roving enquiry into the last details of the case. It is also not advisable to adjudge whether the case shall ultimately end in conviction or not. Only a prima facie satisfaction of the court about the existence of sufficient ground to proceed in the matter is required.

Through a catena of decisions given by Hon'ble Apex Court this legal aspect has been expatiated upon at length and the law that has evolved over a period of several decades is too well settled. In the case of Chandra Deo Singh Vs. Prokash Chandra Bose AIR 1963 SC 1430 the Apex Court had observed as follows:

"The courts have also pointed out in these cases that what the magistrate has to see is whether there is evidence in support of the allegations of the complainant and not whether the evidence is sufficient to warrant a conviction. The learned Judges in some of these cases have been at pains to observe that an enquiry under Section 202 is not to be likened to a trial which can only take place after process is issued, and that there can be only one trial. No doubt, as stated in sub-section (1) of Section 202 itself, the object of the enquiry is to ascertain the truth or falsehood of the complaint, but the magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant."

In the yet another case of *Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker* AIR 1960 SC 1113 the Hon'ble Supreme Court had expressed the views in the following terms:

"Section 202 says that the magistrate may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against and direct an inquiry for the purpose of ascertaining the truth or falsehood of the complaint; in other words, the scope of an inquiry under the section is limited to find out the truth or falsehood of the complaint in order to determine the question of the issue of process. The inquiry is for the purpose of ascertaining the truth or falsehood of the complaint; that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at the stage; for the person complained against can be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial."

In the case of *Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi* 1976 3 SCC 736 the Hon'ble Apex Court had held as follows:

"The magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations, in our opinion, are totally foreign to the scope and ambit of an inquiry under Section 202 of the Code of Criminal Procedure which culminates into an order under Section 204 of the Code. Thus it may be safely held that in the following cases an order of the magistrate issuing process against the accused can be quashed or set aside:

(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) Where the discretion exercised by the magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and (4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings."

The Apex Court decisions given in the case of R.P. Kapur Vs. State of Punjab AIR 1960 SC 866 and in the case of State of Haryana Vs. Bhajan Lal 1992 SCC(Cr.) 426 have also recognized certain categories by way of illustration which may justify the quashing of a complaint or charge sheet. Some of them are akin to the illustrative examples given in the above referred case of Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi 1976 3 SCC 736. It was observed by the Hon'ble Apex Court in Bhajan Lal's case as follows:-

"The following categories can be stated by way of illustration wherein the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure can be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(1) 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.

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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.

(3) 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.

(4) 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.

(5) 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.

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

(7) where a criminal proceeding is manifestly attended with mala fide 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."

Illumined by the case law referred to herein above, this Court has adverted to the entire record of the case.

The brief facts of the case emerging from the record are that the opposite party no. 2 Anwar Ahmad Siddiqui lodged an F.I.R. dated 8.11.2014 in respect of commission of offences under Sections 419, 420, 406 I.P.C., against the total 20 named accused persons including the present applicant who was Company's Branch Manager with the allegations to the effect that a company in the name and style of Weird Industries Ltd. was started having its first office in Allahabad city situated near the clinic of Dr Anil Seth. The said company was registered in the office of Registrar of Companies, Kolkata, State of West Bengal having its Identification No. U-74120 WV 2008 PLC 123790 showing its head office in the Bhagya Laxmi Building, Hawrah, Amta Road, P.O. Dasnagar, District- Das Nagar, State of West Bengal. The first information dated 8.11.2014 gives elaborated description of the Directors of the said company as well as its relevant officials which include the present applicant being Branch Manager in the said company. It is further alleged that in the first information report dated 8.11.2014 that the said company had floated three different schemes i.e. Fixed Deposit Scheme, Monthly Income Scheme and Recurring Deposit Scheme and advertisements campaign was launched to attract the public at large and the named accused Ashutosh Ojha son of Vishwanath Ojha, Jagdish Prasad son of Gangaram and Sannniullah Advocate son of Shakoor started such campaigning activities and several persons were engaged as agents of the company. With the passage of time several offices were opened in different districts and the agents were ensuring deposits from people at large in those schemes. The schemes appear to have been formulated in such a deceitfully attractive format that common people felt tempted to take decisions for depositing

of money in those schemes. The Fix Deposit Scheme was promising to multiply the deposited money in a period of six years up to two and half times. The Monthly Deposit Scheme was promising a payment of Rs. 2,000/- per month up to a period of three years and 11 months on a depositing of Rs. 1,00,000/- and after completion of the period of four years the said monthly income scheme was promising to return the principal amount of Rs. 1,00,000/- The recurring deposit scheme was promising a payment of Rs. 13,200/- after depositing Rs. 1,00,000/- up to 12 months. Within a short span of time the company appear to have successfully tempted rather duped, a large number of persons to fall in the trap. It further transpires that in order to give assurance about the bonafide nature of business different agents were showing documentations of Corporate Work Ministry of Central Government to people. With the strength of money deposited by the public at large the directors of the company allegedly purchased two other companies in working position namely Ranjeev Alianze Ltd. (Steel Plant) and Ganesh Spung Pvt.Ltd. Beside these two companies several other companies were included in the group of companies. However on one fine day the office situated at district Allahabad was found to have been closed and the directors of the said company got incorporated one another company namely Weird Infra Reality India Ltd. having its registration in the Office of Registrar of Companies, District Kolkata State of West Bengal and again the said new company started financial schemes through its earlier employees. The company had opened its Bank Account in AXIS Bank, Civil Lines Allahabad having Account No. 913020045726629 and when the deposited amount of public at large reached to the tune of Rs. 2-3 Crores in the said bank account, the office situated at Central Plaza of the said company was closed. After a few days it came into notice that the office of the said company is being run in a house situated in Mundera Chak, Police Station Dhoomanganj, District- Allahabad which is situated in the lane in front of Hindustan Petrol Pump. When any worker or agent visited the said office of the company at Mudera the directors of the said company namely Sharda Prasad Kesherwani and Indra Kumar intimated that they have no concern with them and now the Mundera Branch has already been closed. In totality a total sum of about Rs. 40 crore has been invested by the public at large in the aforesaid company and hence the F.I.R. to take appropriate action against the culprits was lodged and it was sought that the invested money be returned by the Company with interest to the investors. During the course of investigation statement of various persons including the first informant Anwar Ahmad Siddiqui, one Dharmveer son of Ram Bahadur, Akhilesh Kumar Verma son of Jagjiwan Verma, Dr. Nisar Ahmad son of Abdul Gaffar, Mohd. Aslam son of Rahmat Ali, Mohd. Asif Ansari son of Abdul Ansari and other persons were recorded by the investigating officer under Section 161 Cr.P.C. and relevant documents were also collected in this regard and after completion of investigation I.O. submitted charge sheet dated 11.8.2017 against total eight accused persons including the present applicant Ankit Gupta. The concerned court below passed the order of cognizance on 30.1.2018 and registered the case as Case No. 2314 of 2018, State vs. Ashutosh Ojha and others.

The perusal of the record in the light of the rival submissions made at the bar reveals that the contentions raised on behalf of the present applicant are factual in nature and are sort of defence pleas which would require detailed appreciation of evidence. The submissions made by the applicant's learned counsel call for adjudication on pure questions of fact which may be adequately adjudicated upon only by the trial court and while doing so even the submissions that may be made on points of law can also be more appropriately gone into by the trial court. This Court does not deem it proper, and therefore cannot be persuaded to have a pre-trial before the actual trial begins.

A threadbare discussion of various facts and circumstances, as they emerge from the allegations made against the accused, is being purposely avoided by the Court for the reason, lest the same might cause any prejudice to either side during trial. But it shall suffice to observe that the perusal of the F.I.R. and the material collected by the Investigating Officer on the basis of which the charge sheet has been submitted makes out a prima facie case against the accused at this stage and there appear to be sufficient ground for proceeding against the accused. It may be prima facie observed that the floating of any financial scheme by any company with the deceitful assurance of exorbitant returns to the investors and tempt them with promise of unrealistic multiplication of invested money is one of the facets of the modus operandi adopted by the accused persons in committing the offence of cheating. A person holding a responsible key post like Branch Manager of the company in question which is said to have floated such fraudulent financial schemes cannot claim himself to be an innocuous or innocent unconcerned employee and thereby absolve himself from his responsibility and liability emanating from the acts of such company. A qualified and educated person, who worked as Branch Manager in such dubious financial company, cannot claim bonafides only by raising the defence plea of being a past employee in the company. The claim of the present applicant that being Branch Manager of the company in question he has not committed any offence, is not liable to be accepted without detailed scrutiny of materials available in the case diary and hence, such defence pleas and factual disputes require to be adjudged by the trial court under the scheme of Code of Criminal Procedure which stage has yet to come in respect of the criminal case in question. I do not find any justification to quash the charge sheet or the proceedings against the applicant arising out of it as the case does not seem to fall in any of the categories recognized by the Apex Court which may justify its quashing. There do not appear any such circumstances which may persuade this Court to exercise its inherent jurisdiction and thereby hijack the regular statutory course of trial provided by law and scuttle the same at a premature threshold.

The prayer for quashing the impugned charge sheet or proceedings is refused as I do not see any abuse of the court's process either.

The application therefore stands dismissed.

Order Date :- 11.10.2018 Naresh