

# Shareef Khan And 2 Others vs State Of U.P. And Another on 5 July, 2024

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2024:AHC:109904

Court No. - 89

Case :- APPLICATION U/S 482 No. - 21155 of 2024

Applicant :- Shareef Khan And 2 Others

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

Counsel for Applicant :- Subhash Chand

Counsel for Opposite Party :- G.A.

Hon'ble Prashant Kumar,J.

1. Heard Sri Subhash Chand, learned counsel for the applicants, Sri S.K. Chandraul, learned Additional Government Advocate for the State-opposite party and perused the record.
2. The present application under Section 482 Cr.P.C. has been filed by the applicant praying for quashing the Charge-sheet dated 26.01.2024 and summoning order dated 11.03.2024 as well as entire proceedings of Case No. 314 of 2024 (State vs. Istakar and others) in Case Crime No. 177 of 2023, under Section 272, 273 I.P.C., Police Station Pisawa, District Aligarh, pending in the Court of Judicial Magistrate, 1st Aligarh.
3. Version of F.I.R. in brief is that a raid/inspection was carried out by the Food Safety Officer Khair, District Aligarh alongwith Incharge Food Safety, Aligarh, at the dairy shop of applicant. Where they found that one person was mixing white poster colour articles in the boiler and another was found manufacturing paneer in a drum with white cream articles. Information in this regard was also

provided to the higher officer and Sub Divisional Magistrate and also to the police station and after arrival of police personnels on the spot, inspection was carried out. During inspection various articles were recovered and sealed in a plastic bag and sent to the police station. Samples of food items (panner, milk etc.) were also taken for testing.

4. Learned counsel for the applicants submits that the applicant no. 1 is the owner of dairy and having valid license which is valid upto 20.07.2024. He further submits that looking to the provisions of section 42 of Food Safety and Standard Act, 2006, the F.I.R. lodged against the applicants is not maintainable. He further submits that nothing incriminating has been recovered from the possession of the applicants. He further submitted that without conducting fair and proper investigation, police has submitted charge-sheet on 26.01.2024 against the applicants, thereafter learned magistrate took cognizance and issued summons on 11.03.2024 against the applicants. Further submission is that no offence against the applicants is disclosed and the court below has utterly failed to consider as no prima facie case is made out against the applicants.

5. Per contra, learned A.G.A. has vehemently opposed the application and contended that the essential food items in adulterated form was recovered by the Food Safety Officer from the dairy shop and he rightly lodged the F.I.R. in this regard. He further submits that police after investigation has submitted charge-sheet against the applicants. It is further submitted that the Court below has rightly took cognizance and issued summons against the applicants and no interference is required by this Court in the impugned order as well as the on going proceedings.

6. 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 relates 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.

7. 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."

8. 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.

9. The instant application does not fall under the guidelines laid down by the Hon'ble Supreme Court in the judgements 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.

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

Order Date :- 5.7.2024 Bhanu