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Delivered on 12.09.2022

Court No. - 84

Case :- APPLICATION U/S 482 No. - 11924 of 2022

Applicant :- Dr. Meraj Ali And Another

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

Counsel for Applicant :- Pradeep Kumar Upadhyay

Counsel for Opposite Party :- G.A.,Suresh Chandra Dwivedi

Hon'ble Saurabh Shyam Shamsery,J.

1. Applicants are facing trial arising out of First Information Report dated 17.07.1999, being Case Crime No. 438 of 1999 for allegedly committing offences under Sections 420, 467, 468 IPC. After investigation charge sheet was filed on 18.11.2000 and cognizance was also taken. The applicants filed an application for discharge under Section 239 Cr.P.C. on 23.12.2021 which has been rejected by means of impugned order dated 09.03.2022.

2. Facts of the present case are that an election of Society, namely, "All India Muslim and Rehabilitation Education Society, Aligarh" was conducted on 15.03.1998 and applicants and others were declared office bearers of Society and Opposite Party No. 2 and others were defeated.

3. Dispute arose between elected and defeated office bearers of Society which led to filing a civil suit by applicants on 03.11.1998 against Opposite Party No. 2/ Complainant for permanent prohibitory injunction against Opposite Party No. 2 and its agents, servants, friends and associates, to restrain them for interfering in the functioning and management of plaintiffs (applicants herein). Opposite Party No. 2 (defendant in suit) initially not appeared in suit proceedings and approached the Magistrate by way of filing application dated 17.07.1999 under Section 156(3) Cr.P.C. and on the basis of direction passed by Magistrate concerned, First Information Report, referred above, was lodged alleging that applicants have committed forgery and cheating and a fraudulent election was conducted wherein presence of

some of members was wrongly shown and even the signatures of members were forged. Investigation commenced and meanwhile in the suit proceedings by order dated 06.11.1998 an ex parte interim injunction was granted restraining Opposite Party No. 2 (defendant in suit) in the working of Society. Suit is still pending and presently it is at the stage of recording of evidence and defendants therein have also appeared. Meanwhile, investigation remained pending for one or another reason and finally charge sheet dated 18.11.2000 was filed against applicants for above referred offences. It appears that trial could not proceed due to one or other reason and finally the discharge application dated 23.12.2021 was filed, which was rejected by means of impugned order dated 09.03.20022.

4. Sri Pradeep Kumar Upadhyay, learned counsel for applicants, submitted that the election of Society was fairly conducted by Election Officer and list of elected members was duly submitted to the office of Registrar of Societies. Opposite Party No. 2/ Complainant has not filed any objection before Registrar of Societies to the process of election or result thereof. There was interference from the side of Opposite Party No. 2 in the day-to-day working of Society, therefore, applicants have filed civil suit wherein interim injunction was granted in their favour restraining Opposite Party No. 2/ Complaint/ Defendant therein, from any interference in the day-to-day working of Society. Opposite Party No. 2/ Complaint/ Defendant has not appeared in civil suit for many years and for one or other reason the suit is not decided due to their non-cooperation. Learned counsel further submits that in order to give criminal colour to civil proceedings belated application was filed under Section 156(3) Cr.P.C. on 17.07.1999, i.e., after a period of more than 15 months making baseless allegations of cheating and forgery. The criminal proceedings were initiated only to harass the applicants with ulterior motive for wreaking vengeance on applicants with a view to spite him due to private and personal grudge. Since on a similar issue a civil suit is pending, therefore, criminal proceedings initiated on a belated application is an abuse of process of law. Learned counsel has placed reliance on a

judgment passed by Supreme Court in **Babu Venkatesh and others vs. State of Karnataka and another, (2022) 5 SCC 639** and paras 20 and 21 thereof are reproduced as under:

“20. It could thus be seen that, though this court has cautioned that, power to quash criminal proceedings should be exercised very sparingly and with circumspection and that too in the rarest of rare cases, it has specified certain category of cases wherein such power can be exercised for quashing proceedings.

21. We find that in the present case, though civil suits have been filed with regard to the same transactions and though they are contested by the respondent No. 2 by filing written statement, he has chosen to file complaint under Section 156 (3) of the Cr.P.C. after a period of one and half years from the date of filing of written statement with an ulterior motive of harassing the appellants. We find that, the present case fits in the category of No. 7, as mentioned in the case of State of Haryana v. Bhajan Lal (supra).”

5. The above submissions are vehemently opposed by Sri Munne Lal, learned AGA for State and Sri Suresh Chandra Dwivedi, Advocate for Opposite Party No. 2. They submitted that the offence of cheating and forgery are prima facie made out even on the basis of contents of First Information Report which has been found true during investigation and thereafter charge sheet has also been filed. At the stage of discharge application a Court ought not to enter into question of evidentiary value of material available as it is impermissible to look into the merit of case while exercising power under Section 239 Cr.P.C. Entire election proceeding was a fraudulent act as there was forgery with regarding to putting signatures of members who were not even present during election proceeding and as such it is not a case where civil and criminal proceedings cannot go simultaneously.

6. Heard learned counsel for parties and perused the material available on record.

7. Issue of discharge has recently been considered and law has been reiterated by Supreme Court in **Sanjay Kumar Rai vs. State of U.P. and another**, 2021 SCC OnLine SC 367 and relevant part is extracted hereinafter:

“15. In Madhu Limaye (supra), this Court authoritatively held:

“9... Sometimes the revisional jurisdiction of the High Court has also been resorted to for the same kind of relief by challenging the order taking cognizance or issuing processes or framing charge on the grounds that the Court had no jurisdiction to take cognizance and proceed with the trial, that the issuance of process was wholly illegal or void, or that no charge could be framed as no offence was made out on the allegations made or the evidence adduced in Court.

10. ... Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order, does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused up to the end? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial.

*16. The correct position of law as laid down in Madhu Limaye (supra), thus, is that orders framing charges or refusing discharge are neither interlocutory nor final in nature and are therefore not affected by the bar of Section 397 (2) of CrPC. **That apart, this Court in the above-cited cases has unequivocally acknowledged that the High Court is imbued with inherent jurisdiction to prevent abuse of process or to secure ends of justice having regard to the facts and circumstance of individual cases.** As a caveat it may be stated that the High Court, while exercising its afore-stated jurisdiction ought to be circumspect. The discretion vested in the High Court is to be invoked carefully and judiciously for effective and timely administration of criminal justice system. This Court, nonetheless, does not recommend a complete hands off approach. Albeit, there should be interference, may be, in exceptional cases, failing which there is likelihood of serious prejudice to the rights of a citizen. For example, when the contents of a complaint or the other purported material on record is a brazen attempt to persecute an innocent person, it becomes imperative upon the Court to prevent the abuse of process of law.*

17. Further, it is well settled that the trial court while considering the discharge application is not to act as a mere post office. The Court

has to sift through the evidence in order to find out whether there are sufficient grounds to try the suspect. The court has to consider the broad probabilities, total effect of evidence and documents produced and the basic infirmities appearing in the case and so on. [Union of India v. Prafulla Kumar Samal]. Likewise, the Court has sufficient discretion to order further investigation in appropriate cases, if need be.”

“19. The High Court has committed jurisdictional error by not entertaining the revision petition on merits and overlooking the fact that ‘discharge’ is a valuable right provided to the accused. In line with the fact that the High Court and the court below have not examined the fairness of criminal investigation in this case and other related aspects concerning improvement of witness statements, it is necessary for the High Court to reconsider the entire matter and decide the revision petition afresh. Accordingly, we set aside the impugned order dated 28.11.2018 and remand the case back to the High Court for its reconsideration in accordance with law.”

8. The Court now proceed to consider the rival submission in the backdrop of above referred law that, on the basis of material available, whether there are sufficient ground to try the applicants and whether the discharge application has rightly been rejected or not.

9. From the above referred facts it is not in dispute that an election was conducted of the Society concerned on 15.03.1998 by Election Officer wherein Applicant-1 was elected as General Secretary and Applicant-2 was elected as President of Society whereas the Complainant was defeated. The detail of election was also submitted to the office of Registrar of Societies. Nothing has been placed on record to show that Opposite Party No. 2 has made any objection or initiated any proceeding as provided under Societies Registration Act, 1860 (*hereinafter referred to as “Act, 1860”*) before appropriate authority. On the other hand, applicants being aggrieved by interference in day-to-day working of Society after election by Opposite Party No. 2 and his agents, filed suit for permanent prohibitory injunction on 06.11.1998 wherein initially Opposite Party No. 2/ defendant therein, has not appeared and an ex parte interim injunction was granted restraining Opposite Party No. 2 and his agents from making interference in day-to-day working

of Society. Later on Opposite Party No. 2 has appeared, however, the suit is not decided till date.

10. It is also not in dispute that Opposite Party No. 2/ Complainant has filed an application under Section 156(3) Cr.P.C. on 17.07.1999, i.e., after about 15 months alleging allegation of cheating and forgery committed by applicants during election process. A First Information Report was lodged in pursuance of direction passed by Magistrate concerned and investigation was conducted wherein allegations were found to be true against applicants. Charge sheet was filed on 18.11.2000, however, stage of filing discharge application came after about 21 years and application was rejected by means of impugned order dated 09.03.2022 on the ground that at the stage of discharge, power of Court concerned is only to look whether a prima facie case is made out or not.

11. From the facts as discussed above, it is evident that issue in civil proceedings as well as allegations in First Information Report are arising out of election conducted on 15.03.1998. Opposite Party No. 2 has not challenged the result of election under the provisions of Act, 1860 despite being election result was submitted before Registrar of Societies whereas the applications have approached Civil Court seeking injunction against Opposite Party No. 2. As held in **Sanjay Kumar Rai (supra)** while considering discharge application Court has to consider broad probabilities, total effect of evidence and documents produced and the basic infirmities appearing in the case and so on. However, Trial Court has not appreciated the entire evidence and documents produced alongwith police report that the allegations of cheating and forgery or that the election was vitiated by fraudulent practice, has to be considered firstly by the authority concerned under Act, 1860 and also that there is no proceedings initiated by Opposite Party No. 2 to annul the election. Therefore, the evidence collected during police investigation without even verification of alleged disputed signatures, are not supported by any expert evidence to take atleast a prima faice view that signatures were forged. The prosecution has not even examined Tarik

Ahmad, whose presence was allegedly shown in the election proceedings and even he is not a proposed witness. There is no evidence that Election Officer (Syed Anwar) was not appointed as Election Officer. All these infirmities were not considered which were essential to come to the conclusion that prima facie case was made out against applicants at the time of considering application for discharge.

12. Learned counsel for applicants has rightly placed reliance on **Babu Venkatesh (supra)** that since civil suit was pending between parties and Opposite Party No. 2/ Complainant/ Defendant, has appeared therein and that application under Section 156(3) Cr.P.C. was filed after about 15 months from alleged occurrence, therefore, the same was filed with an ulterior motive of harassing applicants. (See, **Sanjay Kumar Rai (supra)** also). The outcome of above discussion are that:

(I) Opposite Party No. 2/Complainant has not challenged the proceedings of election of Society before appropriate authority under the provisions of Act, 1860.

(II) Civil suit was filed by applicants against Opposite Party No. 2 for permanent prohibitory injunction and vide order dated 06.11.1998 interim injunction has been granted restraining Opposite Party No. 2 from causing any disturbance in day-to-day functioning of Society.

(III) Opposite Party No. 2/ Complainant has approached Magistrate concerned by way of filing application under Section 156(3) Cr.P.C. after a period of about 15 months.

(IV) The allegations made in the application on the basis of which First Information Report was lodged, were not supported by material collected during investigation. Even the relevant persons, whose presence were doubted, were neither examined nor proposed as a witness in the charge sheet. There is no material on record that Election Officer has not conducted the election.

13. In view of above findings it is evident that criminal proceedings initiated against applicants are manifestly attended with mala fide and proceedings are maliciously instituted with an ulterior motive for wreaking vengeance on applicants with a view to spite them due to private and personal grudge.

14. Now the Court proceed to consider, whether on the basis of above findings this Court can exercise its inherent power under Section 482 Cr.P.C. to quash the criminal proceedings.

15. As held in **Babu Venkatesh (supra)**, power to quash criminal proceedings should be exercised very sparingly with caution and that too in rarest of rare cases and certain categories of cases are specified in **State of Haryana and others vs. Bhajan Lal and others, 1992 Supp. (1) SCC 335.**

16. From the above discussion and on the basis of above referred findings this Court is of the view that present case fall under category no. 7 as mentioned in **State of Haryana and others vs. Bhajan Lal (supra)** and for reference it is quoted hereinafter:

“(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.”

17. In view of above analysis on facts and law, this Court is of the view that it is a fit case where Court should exercise its inherent power under Section 482 Cr.P.C.

18. In the result, application is allowed. Impugned order dated 09.03.2022 passed by Chief Judicial Magistrate, Aligarh in Criminal Case No. 1226 of 2001 (State vs. Meraj Ali and others), arising out of Case Crime No. 438 of 1999, under Sections 420, 467, 468 IPC, Police Station Civil Lines, District Aligarh, is hereby set aside.

19. Before parting, the Court feels it appropriate to express its anguish that unnecessary and baseless criminal proceedings are pending for last many years, as in the present case the criminal proceedings are pending

since 1998, i.e., for about 24 years and it has reached only upto the stage of discharge application. Since this Court has quashed the proceedings but after 24 years, therefore, the suffering of accused persons/ applicants cannot be compensated. Speedy trial is a right not only of Complainant but accused persons also. There is no explanation why the proceedings are reached only upto the stage of discharge application after a lapse of more than two decades. Supreme Court in **Hussainara Khaton & Ors vs Home Secretary, State Of Bihar. AIR 1979 SC 1369** has declared that speedy trial is an integral part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution. Thereafter Supreme Court has issued guidelines for speedy trial in **P. Ramachandra Rao vs. State of Karnataka (2002) 4 SCC 578**, however, it appears that due to one or other reasons the directions are not followed in letter and spirit. Therefore, the Trial Courts are directed to undertake endeavour that every criminal proceedings shall be concluded expeditiously, as speedy trial is a right of both Complainant and accused persons.

Order Date :- 12.09.2022

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