

**Court No. - 84**

**Case :-** APPLICATION U/S 482 No. - 3041 of 2022

**Applicant :-** Om Prakash And Another

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

**Counsel for Applicant :-** Satyendra Narayan Singh, Pankaj Kumar Mishra

**Counsel for Opposite Party :-** G.A.

**Hon'ble Sameer Jain, J.**

1. Heard Sri S.N. Singh, learned counsel for the applicants, Sri Arvind Kumar, learned AGA for the State and perused the record of the case.
2. By way of present application, applicants made prayer to quash the charge-sheet no. 1 of 2020 dated 01.01.2020 as well as cognizance/summoning order dated 20.03.2020 and the proceedings of Case No.232 of 2020 (State V.s Om Prakash and another) arising out of Case Crime No. 212 of 2019, under Sections 323, 504, 506, 308 IPC, Police Station Usrahar, District Etawah pending in the court of Additional Chief Judicial Magistrate-IV, Etawah.
3. According to the FIR of the present case, on 09.11.2019 at about 9.00 AM in the morning, applicants assaulted opposite party no.2 and others through wooden sticks while they were working in the field and due to their assault, Ravindra Kumar sustained serious injuries and he was referred to Etawah for treatment. FIR of the present case was lodged on 28.11.2019 under Sections 323, 504, 506 IPC and during investigation, it revealed that actually two persons sustained injuries, namely Anoop Kumar and Ravindra Kumar and both were medically examined. During investigation, it further revealed that in the incident skull bone of Ravindra Kumar fractured and during investigation, the Investigation

Officer also recorded the statements of injured witnesses and other eye witnesses and submitted charge-sheet on 01.01.2020 against the applicants under Sections 323, 504, 506, 308 IPC. After submission of charge-sheet, court below on 20.03.2020 took the cognizance and issued summons to the applicants.

4. Learned counsel for the applicants submitted that applicants have been falsely implicated in the present matter and the FIR of the present case was lodged after about 20 days of the incident and this fact itself shows that FIR is totally false and baseless. He further submitted that out of two persons who sustained injuries, one person namely, Anoop Kumar sustained simple injuries and other injured person, namely Ravindra Kumar, who also alleged to sustained injuries, but his injury report is not on record and only his X-ray report is on record. However, his X-ray report shows that his parietal bone was fractured but as there is no injury report of Ravindra Kumar on record, therefore, merely on the basis of X-ray report, charge-sheet under Section 308 IPC cannot be filed. He further submitted that earlier a day before i.e. 08.11.2019, the side of opposite party no.2 assaulted the applicants side and due to their assault from the side of applicants several persons sustained injuries and FIR was also lodged from applicant side. He further submitted that after lodging the FIR from applicants side, the opposite party no.2 with intention to save skin, lodged the FIR of the present case on false allegations and without any proper investigation charge-sheet was filed against the applicants in the present matter.

5. He next submitted that the cognizance order of the present case is bad as it is cryptic in nature and passed in printed proforma and from the perusal of the cognizance order, it reveals that it was passed without any application of mind. He placed reliance on the following judgments.

(i) Application under Section 482 Cr.P.C. No. 19647 of 2009 (Ankit Vs. State of U.P. and another) decided on 15.10.2009.

(ii) Application under Section 482 Cr.P.C. No. 17364 of 2020 (Emmanuel Masih and others Vs. State of U.P. and another) decided on 04.01.2021.

(iii) Application under Section 482 Cr.P.C. No. 683 of 2021 (Ved Krishna Vs. State of U.P. and another) decided on 11.02.2021.

(iv) Application under Section 482 Cr.P.C. No. 11334 of 2021 (Pankaj Jaiswal Vs. State of U.P. and another) decided on 09.08.2021.

(v) Application under Section 482 Cr.P.C. No.41617 of 2019 (Vishnu Kumar Gupta and another Vs. State of U.P. and another) decided on 11.11.2020.

6. Per contra, learned AGA submitted that there is specific allegations against the applicants in the FIR as well in the statements of injured persons that they assaulted and caused injuries and injury report of one injured is also on record and if injury report shows that the injuries are simple in nature then on that basis the proceedings of the present case cannot be quashed. Learned AGA further submitted that as X-ray report of one injured, namely Ravindra Kumar is on record, which shows that his parietal bone was fractured, therefore, charge-sheet was rightly filed against the applicants under Section 308 IPC.

7. He further submitted that present matter is a State case, therefore, there is no need to pass a detailed cognizance order and perusal of the cognizance order reveals that while passing the same, the court below perused the case diary and other documents and evidences collected by the Investigating Officer during investigation, therefore, there is no illegality in the cognizance order dated 20.03.2020 and the present application is liable to be dismissed.

8. I have heard both the parties and perused the record of the case.

9. The scope of Section 482 Cr.P.C. has been very elaborately discussed by Hon'ble Supreme Court in case of **State of Haryana and others Vs. Bhajan Lal and others reported in [1992 Supp (1) SCC**

335] and in paragraph 102 enumerated 7 categories of the cases where power under Section 482 Cr.P.C. can be exercised which is quoted as follows:-

*"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised 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 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.*

*(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."*

10. Recently the three Judge Bench of the Hon'ble Apex Court in **M/s. Neeharika Inrastructure Pvt. Ltd. Vs. State of Maharashtra and others reported in [AIR 2021 Supreme Court 1918]** also discussed the scope of Section 482 Cr.P.C. and Article 226 of Constitution of India in very detail manner and in paragraph-23 arrived at final conclusion as under:

*i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;*

*ii) Courts would not thwart any investigation into the cognizable offences;*

*iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;*

*iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the "rarest of rare cases (not to be confused with the formation in the context of death penalty).*

*v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*

*vi) Criminal proceedings ought not to be scuttled at the initial stage;*

*vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;*

*viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;*

*ix) The functions of the judiciary and the police are complementary, not overlapping;*

*x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*

*xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*

*xii) The first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not*

*go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;*

*xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;*

*xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;*

*xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;*

*xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.*

*xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the*

*Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.*

*xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied.*

11. Therefore, law is settled that if FIR and other material on record collected by the Investigating Officer during investigation discloses prima facie offence then, proceedings pending against the accused persons cannot be quashed under Section 482 Cr.P.C. and veracity of the allegation made in the FIR and in the statements of witnesses cannot be adjudicated at this stage and the same can only be adjudicated by the trial court during the course of trial.

12. Perusal of the FIR and statements of the injured persons, namely Anoop Kumar and Ravindra Kumar shows that there was specific allegation against the applicants that they assaulted through wooden stick and due to their assault two persons sustained injuries. Both the injured persons Anoop Kumar and Ravindra Kumar were medically examined and their statements were also recorded by the Investigating Officer under Section 161 Cr.P.C. Perusal of injury report of Anoop Kumar shows that he sustained two injuries. One abrasion and one contusion and X-ray report of another injured person Ravindra Kumar shows that his parietal bone was fractured, therefore, their injury report substantiated the allegation made in the FIR as well as their statements recorded during investigation. Therefore, it cannot be said that prima facie no cognizable offence against the applicants is made out. The argument of learned counsel for the applicants is that actually a day before applicants side was assaulted by the side of opposite party no.2 and applicants side also sustained injuries and in this regard FIR was also lodged from the side of

applicants, therefore, only due to this reason, the FIR of the present case was lodged, but this argument cannot be appreciated at this stage as, in case at hand, two persons sustained injuries, therefore, on the ground of enmity proceeding pending against the applicants cannot be quashed. As, from the perusal of the charge-sheet and other documents on record, prima facie offence under Section 323, 504, 506 and 308 IPC is made out against the applicants, therefore, there is no illegality in the charge-sheet dated 01.01.2020 filed against the applicants.

13. The next argument advanced by learned counsel for the applicants is that cognizance order was passed by the court below on printed proforma in cryptic manner, which reflects non-application of judicial mind.

14. The present case is a State case, in which, after investigation charge-sheet has been submitted and court below took cognizance on the basis of police report.

15. The Apex Court in case of **State of Gujarat Vs. Afroz Mohammad Hasanfatta (2019) 20 SCC 539** observed as:-

*"23. Insofar as taking cognizance based on the police report is concerned, the Magistrate has the advantage of the charge-sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating officer/SHO collects the necessary evidence during the investigation conducted in compliance with the provisions of the Code of Criminal Procedure and in accordance with the rules of investigation. Evidence and materials so collected are sifted at the level of the investigating officer and thereafter, charge-sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge-sheet. The court thus has the advantage of the police report along with the materials placed before it by the police. Under Section 190(1)(b) Code of Criminal Procedure, where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process.*

*In case of taking cognizance of an offence based upon the police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the Accused. Such an order of issuing summons to the Accused is based upon satisfaction of the Magistrate*



*considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the Accused. In a case based upon the police report, at the stage of issuing the summons to the Accused, the Magistrate is not required to record any reason. In case, if the charge-sheet is barred by law or where there is lack of jurisdiction or when the charge-sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge-sheet and for not taking it on file."*

16. Recently, three judge Bench of the Apex Court in the case of **Pradeep S. Wodeyar Vs. The State of Karnataka 2021 SCC OnLine SC 1140** after considering the matter in detail observed in paragraph no. 75 as:-

*"75. The Special Judge, it must be noted, took cognizance on the basis of a report submitted under Section 173 Code of Criminal Procedure and not on the basis of a private complaint. Therefore, the case is squarely covered by the decision in Afroz Mohammed Hasanfatta (supra). The Special Judge took note of the FIR, the witness statements, and connected documents before taking cognizance of the offence. In this backdrop, it would be far-fetched to fault the order of the Special Judge on the ground that it does not adduce detailed reasons for taking cognizance or that it does not indicate that an application of mind. In the facts of this case, therefore, the order taking cognizance is not erroneous."*

17. Further, the Apex Court in para 85 (viii) summarised as:-

*"85 (viii) Since cognizance was taken by the Special Judge based on a police report and not a private complaint, it is not obligatory for the Special Judge to issue a fully reasoned order if it otherwise appears that the Special Judge has applied his mind to the material;"*

18. Therefore, from the perusal of the judgment of Afroz Mohammad Hasanfatta (supra) and Pradeep S. Wodeyar (supra) it is clear that if cognizance was taken on police report, then there is no need to pass a fully reasoned order, if from the perusal of cognizance order it appears that court below has applied its mind to the materials on record.

19. In the present case, cognizance order dated 20.03.2020 shows that while passing it, the court below perused the charge-sheet, case diary and other documents, which were collected by the Investigating Officer during investigation and thereafter court was of the view that prima facie ground for taking cognizance is sufficient, therefore, it cannot be said that without

perusing the materials on record, court below took the cognizance. It cannot be said that as cognizance order was passed on printed proforma, therefore, court below did not apply its judicial mind. Therefore, I find no illegality in the cognizance order dated 20.03.2020. The cases relied by the counsel for the applicants are of this Court and as Afroz Mohammad Hasanfatta (supra) and Pradeep S. Wodeyar (supra) are the judgments of the Apex Court, therefore, judgments relied by counsel for the applicants would not help him.

20. The Apex Court in case of Pradeep S. Wodeyar (supra) also discussed the scope of Section 465 Cr.P.C. and observed in paragraph no. 53 as:-

*"53. In order to prove that the irregularity vitiates the proceeding, the accused must prove a 'failure of justice' as prescribed under Section 465 Code of Criminal Procedure. In view of the discussion in the previous section on the applicability of Section 465 Code of Criminal Procedure (and the inability to prove failure of justice) to the cognizance order, the irregularity would not vitiate the proceedings. Moreover, bearing in mind the objective behind prescribing that cognizance has to be taken of the offence and not the offender, a mere change in the form of the cognizance order would not alter the effect of the order for any injustice to be meted out."*

21. Further, the Apex Court in paragraph no. 85(ii) summarised as:-

*"85(ii) The objective of Section 465 is to prevent the delay in the commencement and completion of trial. Section 465 Code of Criminal Procedure is applicable to interlocutory orders such as an order taking cognizance and summons order as well. Therefore, even if the order taking cognizance is irregular, it would not vitiate the proceedings in view of Section 465 Code of Criminal Procedure;"*

22. Therefore, as per Pradeep S. Wodeyar (supra) even if there is an irregularity in cognizance order then also on that ground proceedings in view of Section 465 Cr.P.C. cannot be vitiated.

23. Therefore, from the above discussion, it is clear that although there is no illegality in the cognizance order dated 20.03.2020 as before taking cognizance court below perused the case diary and other documents and charge-sheet but even if there was an irregularity in the cognizance order,

then also on the basis of its proceedings of the present case cannot be quashed as orders of taking cognizance are interlocutory in nature and as per Section 465 Cr.P.C. proceedings on the basis of that irregularity cannot be vitiated.

24. Therefore, from the above discussion, I find no merit in the present application.

25. Accordingly, the present application is hereby **dismissed**.

**Order Date :- 5.7.2022**

AK Pandey