

Reserved on 29.06.2022
Delivered on 04.07.2022

Court No. - 10

Case :- APPLICATION U/S 482 No. - 17024 of 2022

Applicant :- Parvez Ahmad And 3 Others

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

Counsel for Applicant :- Nasira Adil, Mohd Zubair

Counsel for Opposite Party :- G.A.

Hon'ble Rohit Ranjan Agarwal, J.

1. Heard Sri N.I. Jafri, learned Senior Advocate, assisted by Mohd. Zubair, learned counsel for the applicants and Sri Roopak Chaubey, learned A.G.A. for the State.

2. This application under Section 482 Cr.P.C. has been filed for quashing the charge sheet dated 29.05.2020 as well as the entire proceedings of Criminal Case No. 462 of 2021 (State vs. Sonu Qureshi and others) arising out of case crime no. 251 of 2020, under Sections 153-A, 420, 429, 188, 269, 270, 273 I.P.C. and section 3/5/8 of Prevention of Cow Slaughter Act, 1955 and section 11 of Prevention of Cruelty to Animals Act, 1979 and section 7/8 of Environment (Protection) Act, 1986, pending in the court of Chief Judicial Magistrate, Mau. It is further prayed that proceedings in the aforesaid case may be stayed, during the pendency of the application.

3. Sri N.I. Jafri, learned Senior counsel appearing for the applicants submitted that applicant no. 1 is an Assistant Teacher in the education department of the State, while applicant no. 2 is also working as Assistant Teacher in Madrasa Darul Ulum Gausia Kasba Salempur, while applicant no. 3 is running medical shop and applicant no. 4 is Hafiz Quran. All the applicants have been falsely implicated in the case Crime No. 251 of 2020, under Sections 153-A, 420, 429, 188, 269, 270, 273 I.P.C. and section 3/5/8 of Prevention of Cow Slaughter Act, 1955 and section 11 of Prevention of Cruelty to Animals Act, 1979 and section 7/8 of

Environment (Protection) Act, 1986. According to counsel, the First Information Report discloses the fact that two quintal 20 kg. of beef is alleged to have been recovered from 10 persons including the applicants along with certain other items. He submitted that the applicants are qureshi by caste but not indulging in the business of meat. It was then contended that the cow meat (beef) which was recovered from the possession was sent for chemical examination and a report of the Forensic Investigation Laboratory has been received on 05.09.2020 which does not disclose that the sample sent for analysis is of cow. The report has been brought on record as SA-1 to supplementary affidavit. He then contended that after the FIR in question was lodged, the applicants were roped in another criminal cases and case under The U.P. Gangsters and Anti-Social Activities (Prevention) Act, 1986 was lodged being case crime no. 564 of 2020. The said proceedings have been challenged before this Court through Criminal Misc. Application under Section 482 No. 21034 of 2021 and this Court on 16.03.2022 had stayed further proceedings in the said case, copy of the order has been brought on record as SA-2 to supplementary affidavit.

4. Learned Senior counsel submitted that once the report of the forensic laboratory is on record, no case under the Prevention of Cow Slaughter Act is made out against the applicants and the proceedings in case crime no. 251 of 2020 be quashed.

5. Sri Roopak Chaubey, learned A.G.A. appearing for the State submitted that not only the cow meat (beef) was recovered from the possession but also 16 live cattle were also recovered from the possession of the applicants and the other co-accused. According to State counsel, the First Information Report is a detailed report which categorically mentions that out of 16 live cattle stock which included 7 buffaloes, 1 cow, 2 female buffalo's calf, 5 male buffalo's calf and one male cow calf. Thus, it is wrong to say that FSL report gives a clean chit to the applicants, as 16

cattle were found in the possession of the applicants and other co-accused and they were not having any license to run the slaughter house.

6. I have heard learned counsel for the parties and perused the material on record.

7. This application under Section 482 Cr.P.C. has been filed seeking quashing of the proceedings of case crime no. 251 of 2020. The scope and inherent power of this Court for quashing the proceedings under Section 482 Cr.P.C. has been under active consideration of the Apex Court right from the year 1960. In **R.P.Kapur vs. State of Punjab AIR 1960 SC 866**, the Apex Court laid the parameters under which proceedings can be quashed exercising power under Section 482 Cr.P.C. Relevant part of the judgment in **R.P.Kapur** (supra) are extracted here as under :

"It is well established that the inherent jurisdiction of proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the

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criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under S. 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under S. 561-A in the matter of quashing criminal proceedings, and that is the effect of the judicial decisions on the point."

8. In State of Haryana & others vs. Bhajan Lal, 1992 Suppl. (1) SCC 335, the Apex Court relying upon judgment of R.P.Kapur (supra), enumerated the conditions under which inherent power under Section 482 Cr.P.C. can be exercised. Relevant para 102 of the judgment in **Bhajan Lal (supra)** are extracted here as under :

"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 extra-ordinary 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 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 F.I.R. 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."

9. Thus, the Court while laying down the parameters had made it clear that where the allegations made in the first information report or complaint taken at their face value and accepted in entirety do not *prima facie* constitute any offence or make out any case against the accused, the proceedings can be quashed. Similarly in paragraph 102(5), the Court made it clear that where the allegations are so absurd and inherently improbable on the basis whereof no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused, then also power under Section 482 Cr.P.C. can be exercised. In para 102(7), the Court held that where proceedings were with *mala fide* and /or where the proceedings 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 then also the Court can proceed to quash the same.

10. In Parbatbhai Aahir alias Parbhatbhai Bhimsinhbhai Kumar and others vs. State of Gujrat and Another (2017) 9 SCC 641, the Apex Court has laid down the parameters for quashment of first information report/complaint/criminal proceedings in exercise of inherent jurisdiction under Section 482 Cr.P.C. Relevant para 16 of the judgment in **Parbatbhai Aahir alias Parbhatbhai Bhimsinhbhai Kumar and others** (supra) reads as under :

"16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:

16.1 Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;

16.2 The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash Under Section 482 is attracted even if the offence is non-compoundable.

16.3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction Under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

16.4 While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised; (i) to secure the ends of justice or (ii) to prevent an abuse of the process of any court;

16.5. The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated;

16.6. In the exercise of the power Under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on

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the overriding element of public interest in punishing persons for serious offences;

16.7. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;

16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;

16.9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and

16.10. There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.

11. In State of Madhya Pradesh Vs. Laxmi Narain and Other (2019) 5 SCC 688, the Apex Court after considering all the earlier judgments laid down the guidelines for exercising the power under Section 482 Cr.P.C. for quashing the criminal proceedings. Relevant para 15 of the judgment is extracted here as under :

"15. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

15.1. That the power conferred Under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences Under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

15.2 Such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

15.3. Similarly, such power is not to be exercised for the offences

under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

15.4. Offences Under Section 307 Indian Penal Code and the Arms Act etc. would fall in the category of heinous and serious offences and therefore are to be treated as crime against the society and not against the individual alone, and therefore, the criminal proceedings for the offence Under Section 307 Indian Penal Code and/or the Arms Act etc. which have a serious impact on the society cannot be quashed in exercise of powers Under Section 482 of the Code, on the ground that the parties have resolved their entire dispute amongst themselves. However, the High Court would not rest its decision merely because there is a mention of Section 307 Indian Penal Code in the FIR or the charge is framed under this provision. It would be open to the High Court to examine as to whether incorporation of Section 307 Indian Penal Code is there for the sake of it or the prosecution has collected sufficient evidence, which if proved, would lead to framing the charge Under Section 307 Indian Penal Code. For this purpose, it would be open to the High Court to go by the nature of injury sustained, whether such injury is inflicted on the vital/delegate parts of the body, nature of weapons used etc. However, such an exercise by the High Court would be permissible only after the evidence is collected after investigation and the charge sheet is filed/charge is framed and/or during the trial. Such exercise is not permissible when the matter is still under investigation. Therefore, the ultimate conclusion in paragraphs 29.6 and 29.7 of the decision of this Court in the case of Narinder Singh (supra) should be read harmoniously and to be read as a whole and in the circumstances stated hereinabove;

15.5. While exercising the power Under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the Accused; the conduct of the Accused, namely, whether the Accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc."

12. In Mohd. Allauddin Khan vs. State of Bihar and others (2019) 6 SCC 107, the Hon'ble Supreme Court while dealing with the issue as regards appreciation of evidence in proceedings under Section 482 Cr.P.C. held that whether there are contradictions or/and inconsistencies in the statements of the witnesses is essentially an issue relating to appreciation of evidence and the same can be gone into by the Judicial Magistrate

during trial when the entire evidence is adduced by the parties, the Apex Court declined to quash the criminal proceedings.

13. In M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and others AIR 2021 SC 1918, after considering the entire case law relating to the power to quash criminal proceedings/complaint/FIR under Section 482 Cr.P.C., Hon'ble Supreme Court has laid an exhaustive guidelines where are enumerated here as under :

"23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition Under Section 482 Code of Criminal Procedure and/or Under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the Accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed Under Section 173 Code of Criminal Procedure, while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers Under Section 482 Code of Criminal Procedure and/or Under Article 226 of the Constitution of India, our final conclusions are 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

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 encyclopaedia 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

xiii) The power Under Section 482 Code of Criminal Procedure 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 Code of Criminal Procedure, 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 Code of Criminal Procedure and/or Under Article 226 of the 438 Code of Criminal Procedure 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 Code of Criminal Procedure, while dismissing/disposing of the quashing petition Under Section 482 Code of Criminal Procedure 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 Code of Criminal Procedure and/or Under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an

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."

14. In the present case, the applicants could not point out that no offence was made out from the reading of First Information Report, apart from relying the FSL report which was only to the extent that sample which was sent for chemical analysis was not cow meat. However, 16 live cattle were also recovered from the custody of the applicants and other co-accused.

15. Thus, as the applicants could not point out that allegations made in the First Information Report even if they are taken at their face value and accepted in their entirety do not constitute any offence or make out a case against the accused, or the allegations in the First Information Report are so absurd and inherently improbable on the basis of which no prudent person can ever reach at just conclusion that there is sufficient ground for proceeding against the accused and lastly that criminal proceedings are manifestly attended with *mala fide*.

16. I find from the perusal of the First Information Report that *prima facie* cognizable offence is made out against the applicants and only the report of the lab about the chemical analysis of the sample which was sent having been found not to be cow meat but 16 live stock cattle have been found in the custody of the applicants along with other materials, a list of

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which has been given in First Information Report and there being no license with the applicants for running slaughter house, *prima facie*, the offence is made out and charge sheet having been submitted, and there being serious allegations, no ground is made out for quashing the proceedings in view of law laid down by Apex Court in case of **Parbatbhai Aahir** (supra), **Laxmi Narayan** (supra) and **M/s. Neeharika Infrastructure Pvt. Ltd.** (supra).

17. The dictum of Apex Court is that the power under Section 482 Cr.P.C. should be invoked in exceptional cases where no offence is made out or the allegation in the report on face of it does not constitute any offence then such proceedings can be quashed.

18. In the present case, the applicants had tried to set up defence by bringing on record the report of FSL, but the First Information Report not only discloses the recovery of the cow meat but also 16 live cattle stocks along with other incriminating material. The defence so raised by the applicants will be considered by the trial court and such defence set up in the present application cannot be considered by this Court at this stage, at the stage of quashing of the charge sheet.

19. In the result, the application fails and is hereby **dismissed**.

Order Date :- 04.07.2022

V.S.Singh