

**A.F.R.**

**Court No. - 74**

**Case :-** APPLICATION U/S 482 No. - 12608 of 2020

**Applicant :-** Sri Rudra Prakash Tiwari @ Raju Tiwari and another

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

**Counsel for Applicant :-** Shivakant

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

**Hon'ble Ram Krishna Gautam,J.**

1. Heard learned counsel for the applicants and learned A.G.A. representing the State. Perused the records.

2. This application under Section 482 Cr.P.C. has been filed by applicants Rudra Prakash Tiwari @ Raju Tiwari and Ashish Tiwari against State of U.P. and Sushil Kumar @ S.K. Singh with prayer to quash summoning order dated 19.01.2019 as well as entire proceedings of Complaint Case No. 1123 of 2018, Sushil Kumar @ S.K. Singh Vs. Rudra Prakash Tiwari @ Raju Tiwari and others, under Sections 420, 504, 506 I.P.C., P.S. Barra, district Kanpur Nagar, pending in court of Special C.J.M., Kanpur Nagar.

3. Learned counsel for the applicants argued that for the same sequence of occurrence, wherein a cheque was given and the same was dishonoured, a complaint u/s 138 of N.I. Act had been filed and therein applicant no. 1 is on bail. Subsequently, for the same set of circumstances this complaint has been filed. Even though the offence punishable u/s 420 I.P.C. is not made out, but for which there is summoning. In Complaint Case u/s 138 of N.I. Act only son was implicated, whereas in subsequent case father was also implicated. There was some dispute in regard to commission for which cheque was given and the cheque was dishonoured, hence the subsequent case i.e. the present case, is an abuse of process of law. Hence this application with above prayer.

4. Learned A.G.A. has vehemently opposed the above argument.

5. From the very perusal of complaint, it is apparent that Complaint No. 1123 of 2018 was filed by Sushil Kumar @ S.K. Singh against Rudra Prakash Tiwari @ Raju Tiwari and Ashish Tiwari for the offences punishable u/s 406, 420, 504, 506 I.P.C. with contention that the complainant used to search unusable land of farmers for sale on some commission basis for installation of Solar Power Plant for Solar Power Company in the year 2016 and 2017. During this exercise the opposite parties (present applicants) met to the complainant and assured him for getting some land in village Raniganj, Tehsil Hamirpur Sadar, for sale for installation of Solar Power Plant. This was agreed to be on the basis of shared commission. This was agreed, wherein Rs. 30,000/- cash was paid to opposite parties (applicants) for getting those land and revenue documents verified from revenue department. But after execution of sale deed of 60 Acres of land, as above, in favour of Ajoy Power Jupiter Pvt. Ltd., New Delhi, a fraud was committed with complainant with regard to payment of commission. The same was got transferred through RTGS in favour of Rudra Prakash Tiwari and Ashish

Tiwari and when demand was made, it was promised to be paid through cheque, it was got issued and subsequently payment was stopped. Hence when asked for, on 25.4.2018 a threat with abuse was extended. Hence this complaint was filed and for dishonour of cheque a separate proceeding u/s 138 of N.I. Act is being said to be pending. For offence of fraud and abuse with extension of threat punishable u/s 420, 504, 506 I.P.C., a separate complaint was filed, as in the trial u/s 138 of N.I. Act, which is for specific proceeding under special procedure given in above Act, may not be properly redressed. Hence for offences of fraud, abuse and extension of threat, this criminal case was filed, wherein the complainant was examined u/s 200 Cr.P.C. and his witnesses Chandrapal Yadav and Manoj Gupta were examined u/s 202 Cr.P.C. They are in corroboration with complaint and on the basis of these evidence collected during enquiry by Magistrate, the impugned summoning order was passed against applicants Rudra Prakash Tiwari @ Raju Tiwari and Ashish Tiwari.

6. This court in exercise of its inherent jurisdiction u/s 482 Cr.P.C. is not expected to meticulously analyse the facts and evidence as it is within the domain of trial court.

7. Saving of inherent power of High Court, as given under Section 482 Cr.P.C, provides that nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Meaning thereby this inherent power is with High Court (I) to make such order as may be necessary to give effect to any other order under this Code (II) to prevent abuse of the process of any Court (III) or otherwise to secure the ends of justice. But Apex Court in **State of Andhra Pradesh v. Gaurishetty Mahesh, JT 2010 (6) SC 588: (2010) 6 SCALE 767: 2010 Cr. LJ 3844** has propounded that "*While exercising jurisdiction under section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable apprehension of it accusation would not be sustained. That is the function of the trial Judge/Court*". In another subsequent **Hamida v. Rashid, (2008) 1 SCC 474**, hon'ble Apex Court propounded that "*Ends of justice would be better served if valuable time of the Court is spent in hearing those appeals rather than entertaining petitions under Section 482 at an interlocutory stage which after filed with some oblique motive in order to circumvent the prescribed procedure, or to delay the trial which enable to win over the witness or may disinterested in giving evidence, ultimately resulting in miscarriage of Justice*". In again another subsequent **Monica Kumar v. State of Uttar Pradesh, (2008) 8 SCC 781**, the Apex Court has propounded "*Inherent jurisdiction under Section 482 has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself.*" While interpreting this jurisdiction of High Court Apex Court in **Popular Muthiah v. State, Represented by Inspector of Police, (2006) 7 SCC 296** has propounded "*High Court can exercise jurisdiction suo motu in the interest of justice. It can do so while exercising other jurisdictions such as appellate or revisional jurisdiction. No formal application for invoking inherent jurisdiction is necessary. Inherent jurisdiction can be exercised in respect of substantive as*

*well as procedural matters. It can as well be exercised in respect of incidental or supplemental power irrespective of nature of proceedings".*

8. Regarding prevention of abuse of process of Court, Apex Court in ***Dhanlakshmi v. R.Prasana Kumar, (1990) Cr LJ 320 (DB): AIR 1990 SC 494*** has propounded "*To prevent abuse of the process of the Court, High Court in exercise of its inherent powers under section 482 could quash the proceedings but there would be justification for interference only when the complaint did not disclose any offence or was frivolous vexatious or oppressive*" as well as in ***State of Bihar v. Murad Ali Khan, (1989) Cr LJ 1005: AIR 1989 SC 1***, Apex Court propounded "*In exercising jurisdiction under Section 482 High Court would not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not*".

9. Meaning thereby, exercise of inherent jurisdiction under Section 482 Cr.P.C. is within the limits, propounded as above.

10. Accordingly, there remains nothing for any indulgence in this proceeding. The prayer for quashing summoning order as well as proceeding of the aforesaid complaint case is refused and the application u/s 482 Cr.P.C. is hereby dismissed.

**Order Date :- 21.9.2020**

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