A.F.R.
Reserved on – 21.10.2020
Delivered on – 11.11.2020

Court No. - 51

Case :- APPLICATION U/S 482 No. - 41617 of 2019

Applicant :- Vishnu Kumar Gupta And Another
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Anshul Kumar Singhal
Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Manju Rani Chauhan,J.

1. Heard Sri Anshul Kumar Singhal, learned counsel for the applicants and Sri Pankaj Srivastava, learned A.G.A. for the State and perused the record.

2. This application under Section 482 Cr.P.C. has been filed seeking quashing of the charge sheet dated 12.10.2018 and summoning order dated 22.12.2018 as well as the entire proceedings of Case No. 4492 of 2018 (State Vs. Vishnu Gupta), arising out of Case Crime No. 0689 of 2017, under Sections 420, 467, 468, 471, 406 I.P.C., Police Station Hathras Gate, Hathras, pending in the court of Chief Judical Magistrate, Hathras.

3. It has been submitted by learned counsel for the applicants that the F.I.R. has been lodged with false and frivolous allegations on 12.09.2017 by Block Education Officer, Ramanpur, District Hathras, on the basis of the enquiry report submitted by the Additional District Magistrate, (F&R) Hathras that the applicants were indulged in raising fake bills with regard to the vehicle services and had gained a sum of Rs.3,08,593/- in connivance with the District Basic Education Officer, Hathras and as such, the F.I.R. was lodged on the basis of the directions issued by the District Magistrate.

4. Before arguing the case on merits, learned counsel for the applicants while pressing the present application under Section 482 Cr.P.C. submits that after submission of charge sheet the applicants have been summoned by order dated 22.12.2018 and the court below while summoning the applicants has materially erred and did not follow the dictum of law as propounded by the Hon'ble Supreme Court in various cases that summoning in criminal case is a serious matter and the court below without dwelling into material and visualizing the case on the touch stone of probability should not summon accused person to face criminal trial. It is further submitted that the court below has not taken into consideration the material placed before the trial court along with charge sheet and, therefore, the trial court has materially erred in summoning the applicants. The court below has

summoned the applicants through a printed order, which is wholly illegal.

5. It has been further submitted that the impugned summoning order dated 22.12.2018 is not a judicial order as it has been passed on a printed proforma without recording any reasons in support of satisfaction for taking cognizance against the applicants and merely the case, Section, date of the order and date of the summon have been filled.

6. It is next submitted that no offence as described in the F.I.R. or in the statement of the witnesses recorded during the course of investigation has taken place and the whole story as narrated in the F.I.R. as well as in the statement of the witnesses has been cooked and manufactured, therefore, the court below has materially erred in summoning the applicants, as such the orders are liable to be set aside.

7. In support of his submission, learned counsel for the applicants has relied upon several judgements of this Court.

Ankit Vs. State of U.P. And Another reported in [2009(9) ADJ 778]

Shakuntala Devi Vs. State of U.P. And 4 others passed in Application U/s 482 No. 11232 of 2018

Avdhesh Vs. State of U.P. And Another reported in [2019(6) ADJ 667]

Dushyant Kumar Vs. State of U.P. And Others passed in Application U/s 482 No. 7206 of 2020

Ashu Rawat Vs. State of U.P. And Another passed in Application U/s 482 No. 13883 of 2020

Rishipal & others Vs. State of U.P. And Another [2019(3)ADJ 699]

8. Learned A.G.A., however, opposes the contention of learned counsel for the applicants on the ground that the court below keeping in view the charge sheet and material submitted therewith, after applying judicial mind and finding sufficient material on record, summoned the applicants along with other co-accused persons to face trial and, therefore, there is nothing illegal so far as the order of summoning passed by the court below is concerned.

9. Having heard learned counsel for the parties and perused the record, it is apparent that all submissions put forth by learned counsel for the applicants before this Court are pertaining to factual aspect of the matter and can only be considered by a criminal court in a full-fledged criminal trial, and it is not a stage where minute scrutiny of the evidence should have been made by the court below.

10. At this juncture, it is fruitful to have a look so far as the law pertaining to summoning of the accused persons, by taking cognizance on a police report filed under section 173 of the Cr.P.C., is concerned and the perusal of the case law

mentioned herein below would clearly reveal that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since, it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the material collected by the Investigating Officer results in sufficient grounds to proceed further and would constitute violation of law so as to call a person to appear before the criminal court to face trial. This discretion puts a responsibility on the magistrate concerned to act judiciously keeping in view the facts of the particular case as well as the law on the subject.

11. In AIR 2012 SC 1747, **Bhushan Kumar and Anr. v. State (NCT of Delhi) and Anr.**, the Apex Court has held that Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a pre-requisite for deciding the validity of the summons issued.

12. In AIR 2015 SC 923, **Sunil Bharti Mittal v. Central Bureau of Investigation (Three Judges Bench)** Hon,ble Apex Court held as under:

" 47. However, the words "sufficient grounds for proceeding" appearing in the Section are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself.."

13. The provisions relating to the power of the police to investigate into offences and the procedure to be adopted by them are to be found in Chapter XII which falls under the heading 'Information to the Police and their powers to investigate'. Under Section 156 (1) of the Code an officer-in-charge of a police station may investigate any cognizable offence without any order of the Magistrate, however, this is not a case pertaining to non-cognizable cases, wherein without an order from a Magistrate specified in Section 155(2) no investigation can be made. Any Magistrate empowered under Section 190 may order, under Section 156 (3), before taking cognizance of offence, the police to investigate into a cognizable case. Section 157 prescribes the procedure to be followed by the officer-in-charge of a police-station when he has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate and in such an

eventuality he will forthwith send a report of the same to a Magistrate, empowered to take cognizance of such offence upon a police report and proceed in person, or depute any one of his subordinate officers to investigate the case. No need to say that if there is sufficient material/ evidence against accused person(s) arrest of the offender may be made. Where the S.H.O. of a police station take a decision not to investigate an cognizable offence the Magistrate even then may direct the police to make an investigation under section 156(3) of the Cr.P.C. Above mentioned provisions clearly demonstrate that scheme of the Code is that an investigation should take place into a cognizable offence and the investigation must be carried out and completed without delay. The investigation part is however left in entirety to the police and there is no scope of interference with the same.

14. Now come the next stage where after investigation the officer in charge of the police-station may find sufficient material against accused person(s) or may also not find sufficient material as the case may be. If sufficient evidence or reasonable grounds to justify the forwarding of the accused to a Magistrate have been found in investigation, such officer will forward the accused to a Magistrate empowered to take cognizance of the offence, under Section 170 of the Code. On the other side, if it appears to the officer in charge of the police station that there is no sufficient evidence or reasonable ground to forward the accused to a Magistrate, he by virtue of Section 169 of the Code will release the accused, if in custody, on his executing a bond, to appear, if and when required, before a Magistrate empowered to take cognizance of the offence. The aforesaid provisions however make it very clear that in either eventuality, after completion of the investigation, the officer in charge of the police station will have to submit a report under Section 173, to the Magistrate. It is worthwhile to recall here that nowhere in the Code expression 'charge-sheet' or 'final report' has been used and Section 173 of the Code talks only about a report to be submitted by the police after completion of the investigation.

15. In **Darshan Singh Ram Kishan v. State of Maharashtra** reported in MANU/SC/0089/1971: (1971) 2 SCC 654, it was held that the process of taking cognizance does not involve any formal action, but it occurs as soon as the Magistrate applies his mind to the allegations and, thereafter, takes judicial notice of the offence. As provided by Section 190 of the Code of Criminal Procedure, a Magistrate may take cognizance of an offence either, (a) upon receiving a complaint, or (b) upon a police report, or (c) upon information received from a person other than a police officer or even upon his own information or suspicion

that such an offence has been committed. As has often been held, taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a police officer. Therefore, when a Magistrate takes cognizance of an offence upon a police report, prima facie he does so of the offence or offences disclosed in such report."

16. In the case of Fakhruddin Ahmad (supra), the Hon'ble Supreme Court has observed that being an expression of indefinite import, it is neither practicable nor desirable to precisely define as to what is meant by "taking cognizance". Nevertheless, it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs title emphasis that it is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be positively stated that he has taken cognizance of the offence. Cognizance is in regard to the offence and not the offender.

17. In the case of Harishchandra Prasad Mani and others (supra), it was held in para 12 that it is well settled by a series of decisions of this Court that cognizance cannot be taken unless there is at least some material indicating the guilt of the accused vide *R.P. Kapur v. State of Punjab AIR 1960 SC 866: (1960) 3 SCR 388: 1960 Cri LJ 1239, State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, Janata Dal v. H.S. Chowdhary (1992) 4 SCC 305: 1993 SCC (Cri) 36, Raghubir Saran (Dr.) v. State of Bihar AIR 1964 SC 1:(1964) 2 SCR 336:(1964) 1 CRi LJ 1, State of Karnataka v. M Devendrappa (2002) 3 SCC 89: 2002 SCC (Cri) 539 and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque (2005) 1 SCC 122: 2005 SCC (Cri) 283.*

18. This type of order has already been held unsustainable by this Court in the case of Ankit (supra) relying on in a number of decisions of the Apex Court. The relevant portion of the said decision, is extracted below:

"Although as held by this Court in the case of **Megh Nath Guptas & Anr V State of U.P. And Anr,** 2008 (62) ACC 826, in which reference has been made to

the cases of **Deputy Chief Controller Import and Export Vs Roshan Lal Agarwal, 2003 (4^) ACC 686 (SC), UP Pollution Control Board Vs Mohan Meakins, 2000 (2) JIC 159 (SC): AIR 2000 SC 1456 and Kanti Bhadra Vs State of West Bengal, 2000 (1) JIC 751 (SC): 2000 (40) ACC 441 (SC),** the Magistrate is not required to pass detailed reasoned order at the time of taking cognizance on the charge sheet, but it does not mean that order of taking cognizance can be passed by filling up the blanks on printed proforma. At the time of passing any judicial order including the order taking cognizance on the charge sheet, the Court is required to apply judicial mind and even the order of taking cognizance cannot be passed in mechanical manner. Therefore, the impugned order is liable to be quashed and the matter has to be sent back to the Court below for passing fresh order on the charge sheet after applying judicial mind."(Emphasis supplied)

19. In view of the above, the conduct of the judicial officers concerned in passing orders on printed proforma by filling up the blanks without application of judicial mind is objectionable and deserves to be deprecated. The summoning of an accused in a criminal case is a serious matter and the order must reflect that Magistrate had applied his mind to the facts as well as law applicable thereto.

20. In light of the judgments referred to above, it is explicitly clear that the order dated 22.12.2018 passed by Chief Judicial Magistrate, Hathras is cryptic and does not stand the test of the law laid down by the Apex Court. Consequently, the order dated 22.12.2018 cannot be legally sustained, as the Magistrate failed to exercise the jurisdiction vested in him/her resulting in miscarriage of justice.

21. Accordingly, the present criminal misc. application succeeds and is allowed at the admission stage without issuing notice to the prospective opposite parties, as they have no right to be heard at pre-cognizance stage. Order dated 22.12.2018 is, hereby, quashed.

22. The Chief Judicial Magistrate, Hathras is directed to exercise his discretionary power and decide afresh the application for summoning the applicants and pass appropriate orders in accordance with law keeping in view the observations made by this Court as well as the direction contained in the judgments referred to above within a period of two months from the date of production of a certified copy of this order.

23. With the above direction, the application stands allowed.

(Manju Rani Chauhan, J.)

Order Dated: 11.11.2020
Priya