

A.F.R.

Court No. - 37

Case :- APPLICATION U/S 482 No. - 6193 of 2021

Applicant :- Virendra Kumar Yadav

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Mohammad Fahad, Devesh Mishra, Vijay Gautam (Senior Adv.)

Counsel for Opposite Party :- G.A.

Hon'ble Dr. Kaushal Jayendra Thaker, J.

Heard learned counsel for the applicant and learned A.G.A. for the State and perused the record.

The present application under Section 482 Cr.P.C. has been filed by the applicant with the prayer to quash the impugned Summoning Order dated 08.10.2020 passed by the Chief Judicial Magistrate Gautambudh Nagar, in Criminal Case No. 24176 of 2018, Case Crime No.1105 of 2018, under Sections 332, 323, 504 and 506 I.P.C., Police Station- Sector- 20, Noida, District- Gautambudh Nagar.

The applicant is constable. He had filed his discharge application pursuant to order passed by this Court 05.02.2019 which has been dismissed.

Order dated 05.02.2019 reads as under:-

"Heard learned counsel for the parties and perused the record.

This application under Section 482 of the Code of Criminal Procedure (for short 'Code') has been filed on behalf of the applicant with a prayer to quash the charge sheet No. 1 dated 18.09.2018 and entire criminal proceeding against the applicant before Chief Judicial Magistrate, Gautam Budh Nagar in Case Crime No. 1105 of 2018, under Sections 332, 323, 504, 506 I.P.C., Police Station- Noida Sector 20, District-Gautam Budh Nagar (State vs. Virendra Singh Yadav) as well as cognizance order dated 22.10.2018.

Learned counsel for the applicant contended that first information report has been lodged with false allegation only to harass the applicant.

Per contra, learned A.G.A. opposed the prayer made and contentions thereof raised by learned counsel for the applicant.

All the submissions made at the bar relate to the disputed questions of fact, which cannot be adjudicated upon by this Court in exercise of its extraordinary jurisdiction under Section 482 of Code.

From the perusal of the material on record and looking into the facts of the case, at this stage it cannot be said that no offence is made out against the applicant.

In view of the above, the prayer for quashing the impugned charge-sheet, the impugned cognizance order as well as the entire proceedings in the aforesaid case is hereby refused.

However, if applicant claims for discharge at appropriate stage, the same shall be decided by trial court by speaking order.

With the aforesaid observations/directions, the instant application stands disposed of."

The applicant is a constable and it is submitted that if he would be arrested in criminal matter for which he is facing trial and prosecution, he may suffer immense loss. As per Section 332 I.P.C. is concerned, it is punishable for three years As far as Section 323 I.P.C. is concerned, it is punishable with one year and fine and all the both. As far as Sections 504 I.P.C. and 506 I.P.C. is concerned, it is punishable for two years or with fine. As far as Section 506 I.P.C. is concern, it is punishable for two years or the fine, Part-II of 506 I.P.C. is punishable up to seven years and or fine. All these are within the perview of Section 41A of Cr.P.C. and as per the Division Bench of this Court in **Criminal Misc. Writ Petition No. 17732 of 2020 (Vimal Kumar And 3 Others Vs. State Of U.P. And 3 Others)** decided on 28.01.2021 has considered the provisions of Section 41A of the Cr.P.C. and held that the accused shall not be arrested without following the procedure as envisaged in Section 41A of Cr.P.C., Wherein the Division Bench has observed as follows:-

*Moreover, reliance on the judgements dated 04.09.2018 passed by Apex Court in the case of **Social Action Forum for Manav Adhikar Vs. Union of India, Ministry of Law and Justice and others in Writ Petition (Civil) No. 73 of 2015 with Criminal Appeal No. 1265 of 2017 Writ Petition (Criminal) No. 156 of 2017.***

In which Hon'ble Supreme Court has also issued directions:

"20. We, therefore, direct the Magistrates/ Police authorities that when accused alleged with offence punishable up to 7 years imprisonment are produced before them remands may be granted to accused only after the Magistrate satisfies himself that the application for remand by the police officer has been made in a bona fide manner and the reasons for seeking remand mentioned in the case diary are in accordance with the requirements of Section 41(I) (b) and 41 A Cr.P.C., and there is concrete material in existence to substantiate the ground mentioned for seeking remand. Even where the accused himself surrenders or where investigation has been completed and the Magistrate needs to take the

accused in judicial custody as provided under Section 170(I) and Section 41(I)(b)(ii)(e) Cr.P.C. prolonged imprisonment at this initial stage, where the accused has not been adjudged guilty may not be called for, and the Magistrate and Sessions Courts are to consider the bails expeditiously and not to mechanically refuse the same, especially in short sentence cases punishable with upto 7 years imprisonment unless the allegations are grave and there is any legal impediment in allowing the bail, as laid down in **Lal Kamendra Prap Singh Vs. State of U.P. (2009) 4 SCC 437**, and **Sheoraj Singh @ Chuttan Vs. State of U.P. and others, 2009(65) ACC 781**. The facility of releasing the accused on interim bail pending consideration of their regular bails may also be accorded by the Magistrates and Sessions Judges to appropriate cases.

21. The Magistrate may also furnish information to the Registrar of the High Court through the District Judge, in case he is satisfied that a particular police officer has been persistently arresting accused in cases punishable with upto 7 year terms, in a mechanical or mala fide and dishonest manner, in contravention of the requirements of sections 41(1)(b) and 41 A, and thereafter the matter may be placed by the Registrar in this case, so that appropriate directions may be issued to the DGP to take action against such errant police officer for his persistent default or this Court may initiate contempt proceedings against the defaulting police officer.

22. The Sessions District Judges should also be directed to impress upon the remand Magistrates not to routinely grant remand of accused to police officers seeking remand for accused if the pre-conditions for granting the remands mentioned in sections 41(1)(b) and 41 A Cr.P.C. are not disclosed in cases punishable with 7 year terms, or where the police officer appears to be seeking remand for an accused in a mala fide manner in the absence of concrete material. The issue of compliance with sections 41(1)(b) and 41 A Cr.P.C and the directions of this Court in this regard may also be discussed in the monthly meetings of the District Judges with the administration and the superior police officials.

23. We are also of the view that the Registrar General may issue a circular within a period of one month with directions to the Sessions Courts and Magistrates to monitor and oversee the applications for remand sought by the arresting police officers and to comply with the other directions mentioned herein above.

25. As already indicated above we are of the view that by routinely mentioning in the case diary that a particular condition referred to in sections 41(1)(b) or 41 A Cr.P.C. has been met for seeking police remand, would not provide adequate reason for effecting the arrest. The DGP is also directed to circulate the present order to all subordinate police officers.

We have been pained to note that regularly petitions are filed where the offence committed would be for a lesser period than seven years or maximum punishment would be seven years and they routinely bring by way of writ petition scrap of being arrested. The provision of Section 41-A were incorporated of this purpose only that concerned who is not charged with heinous crime does not require and whose custody is not required may not face arrest. But we are pained that this provision has not met his avoid purpose.

27. Let a copy of this order be sent to the DGP, U.P., Member Secretary, U.P. SLSA and District Judges in all districts of U.P. for compliance and communication to all the concerned judicial magistrates before whom the accused are produced for remand by the police officers within ten days.

In order to ensure what we have observed above, we give the following directions:

11.1. The State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41-A of Cr.P.C. 1973.

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

While parting we appreciated the efforts made by learned counsel for the petitioners namely Sri Ajay Vikram Yadav who has seriously urged to us that as scribe are not facing what said to case under the dowry prohibition Act as there is still no marriage, but apprehend to arrest. That the police authorities would convey our guidelines not only in this matter but in all the investigations which are to be taken.

A copy be circulated by learned Registrar General to the Law Secretary who shall impress upon all the police stations officers about the same.

We would like to draw the attention of the police authorities of the State to our order dated 18.01.2021 and the provisions of section 41-A of the Cr.P.C. Despite there being warning from the Apex Court in the matter reported in **Writ Petition (Civil) No. 73 of 2015 Social Action Forum for Manav Adhikar and another Vs. Union of India, Ministry of law and Justice and others (Supra) and in the matter of Anand Tiwari Vs. State of U.P. and others passed in Crl. Misc. Writ Petition No. 17641 of 2020 and Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273** has directed the police authorities to try the balance between individual liberty and social order. ”

The fact that the applicant is constable and the allegations against him are all triable by a Judicial Magistrate. It appears that the prosecution is going on and the oscillation of deleting of Section 332 I.P.C. and adding Section 332 I.P.C. has caused lots of problem. The learned Judicial Magistrate would also see that Section 89 of Cr.P.C.. namely alternative redressal mechanism as well as provisions of Section 320 Cr.P.C.. may also be invoked looking to the factual data, this indulgence to the applicant who is a police constable and the dispute arose due to his duty is shown. Looking into the factual scenario which has been canvassed even in discharge application and it appears that application that the complainant himself was at fault who was the superior officer of the petitioner.

This petition is partly **allowed**. The petitioner shall not be coercively dealt with as per the aforesaid observations.

Order Date :- 1.7.2021

Krishna*