

Court No. - 74

Case :- APPLICATION U/S 482 No. - 1213 of 2020

Applicant :- Tanmay Pandey

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

Counsel for Applicant :- Rahul Mishra

Counsel for Opposite Party :- G.A., Himanshu Shekhar

with

Case :- APPLICATION U/S 482 No. - 18760 of 2022

Applicant :- Rajesh Kumar Maurya And Another

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

Counsel for Applicant :- Chandra Kumar Rai

Hon'ble Saurabh Shyam Shamsbery, J.

1. Above referred both applications are arising out of same charge sheet, therefore, with consent of learned counsel for parties, are being decided by a common judgment.

2. Applicant Tanmay Pandey (Application No. 1213 of 2020) has declared himself to be an employee of Collectorate, Azamgarh, however, name of post and designation has not been disclosed in application or in any other material. Surprisingly, the affidavit sworn in support of application is of one Shiv Shankar declaring himself to be a family friend without disclosing that as to why applicant himself has not sworn the affidavit. The declaration made in last paragraph of affidavit declares that contents of paragraph of application were either true to personal knowledge of deponent or on basis of record or as informed by deponent. There is no declaration

that source of information of deponent was the applicant. Therefore, on face of it, affidavit is legally not duly sworn and present application could be rejected for said legal error, however, still considering that present application is pending for last 4 years and applicant is enjoying interim order as well as learned Advocates for parties have placed submission on fact and legal issues, therefore, Court proceeds to decide the same on merit.

3. Applicants Rajesh Kumar Maurya and Shailesh Upadhyay (Application No. 18760 of 2022) have also declared themselves to be government employees, however, their designation or posts have also not been disclosed either in the application or in any other document. For reference, relevant part of paragraph 28, 29 and 30 of affidavit are being quoted below :-

“28. That the applicants till date have failed to cull out exact reasons and motive of informant in falsely implicating him however he feels and has a guess that since the parties were undergoing litigation before the revenue Court in Collectorate, Azamgarh and **whereas the applicants are an employee in Collectorate, Azamgarh,** it appears that the informant has falsely implicated the applicants as accused in the F.I.R. that has led to the impugned charge sheet on his misplaced apprehension and understanding that the applicants are conniving with parties at litigation with him and is helping them in the revenue proceedings before the Revenue Court, Azamgarh.

29. That at the cost of repetition it is stated that the applicants have absolutely got no concern with Gata No.196 or structure standing thereon or with the litigations in Revenue as well as Civil Court in respect of the said property and therefore **the applicants who is a Government Employee** have been unnecessarily tagged in as accused by the

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informant and have been thus subjected to undue harassment and victimization.

30. That therefore any coercive proceeding in view of impugned charge sheet and consequent proceedings of the court below sourced in F.I.R. which proceeds on malice shall ruin the future of applicants, particularly in view of the fact that **he is a Government Employee.**"

4. Above declaration on face of it, appears to be false being not supported by any document, therefore, this application could be rejected only on above referred legal error, however, since this application is pending for last 2 years, and applicants are enjoying interim order as well as rival submissions have been placed, therefore, Court proceeds to decide it also on merit.

5. These cases are arising out of an FIR lodged by complainant Badri Prasad Gupta against 8 named accused including present applicants on 23.12.2016 at 20.25 Hours alleging that all accused have formed an unlawful assembly and in furtherance of their common intention to demolish house of complainant, came at place of occurrence at about 7.30 Hours and demolished the house with help of a JCB machine and when complainant and others came, accused persons extended threats and abused also. It was further alleged that a call was made on Dial 100 and it was responded also and only thereafter, the accused persons ran away without taking the JCB, which was later on confiscated by the police. During investigation, statements of complainant and others were recorded and finally a charge sheet being No. 01 was filed on 14.08.2017 against 5 named accused including these applicants. Another charge sheet was filed against other accused viz.,

Ashutosh also. Involvement of two other named accused was found false.

6. The crux of argument of S/Sri Rahul Mishra and Chandra Kumar Rai, learned Advocates for applicants was that applicant Tanmay Pandey who has declared himself to be a government employee at Collectorate, Azamgarh as well as other two applicants Rajesh Kumar Maurya and Shailesh Upadhyay, who have also declared themselves to be government employees are not concerned with alleged crime as well as civil litigations between rival parties are also pending before Revenue Court.

7. Learned Advocates have submitted that reason for their false implication appears to be that some civil dispute was pending before Revenue Court also, therefore, in order to put pressure on applicants and to provide favour.

8. Learned Advocates have also submitted that involvement of some of named accused were found false, therefore, it appears that FIR was lodged with exaggerated facts.

9. Learned Advocates have referred contents of civil dispute pending between complainant and other party for injunction in regard to plot in question, however, no injunction was granted.

10. Learned Advocates have also referred that an application was moved by one of named accused to recover the CCTV footage installed around place of occurrence, however, no finding was recorded of the footage. CCTV footage are also not on record. The I.O. has not taken photographs of debris or demolished structure. Statement of police officers who came at the place of occurrence in response to Dial 100 have also not

been recorded though some police officers are proposed witnesses in the charge sheet. This Court has earlier directed to place CCTV footage on record, however, it was not complied with.

11. Per contra, learned A.G.A. as well as Sri Himanshu Shekhar, learned counsel for opposite party no.2 have supported the outcome of investigation, that it was based on statement of complainant and other witnesses. They have also submitted that it was a fair investigation since involvement of some named accused was not found to be true.

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

13. In order to appreciate rival submissions, contents of FIR, Majid Bayan, statement of complainant, statement of Smt. Shipra Baranawal, wife of complainant and statement of Ambrish Kumar who are cited as proposed witness in charge sheet are reproduced below :-

“24.12.2016/ ब्यान वादी- श्री बट्टी प्रसाद गुप्ता पुत्र जुगुल किशोर नि० आसिकगंज पीएस कोतवाली आजमगढ़ बदरियाफत प्रथम सूचना रिपोर्ट का पूर्ण समर्थन व ताईद करते हुए बता रहे हैं कि साहब दिनांक 23.12.16 को सुबह समय 7.30 ए एम बजे राजेश कुमार मौर्य सा० हाफिजपुर, आशुतोष कुमार द्विवेदी मिशन कम्पाउन्ड नरौली राकेश राम उर्फ बबलू प्राइमरी अध्यापक सा० मातबरगंज संजीव सिंह पुत्र दशरथ सिंह साद कुर्मी टोला रामकृष्ण मिश्रा सा० ठण्डी सडक रवि मिश्रा पुत्र जितेन्द्र मिश्रा सा० बडादेव तन्मय पाण्डेय (कर्मचारी कलेक्ट्रेट) शैलेश उपाध्याय सा० हाफिजपुर ने नाजायज मजमा बनाकर लाठी लिए हुए मेरे मकान को जे०सी०बी० मशीन से गिराने लगे कि मौके पर आलोक कुमार व अन्य लोगो से सूचना दिया तो प्रार्थी मौके पर गया तो मना किया तो माँ बहिन को गाली देते हुए जान से मारने की धमकी देते हुए मारने को दौड़ाया प्रार्थी और आलोक पीछे हटकर अपनी जान बचायी प्रार्थी ने पुलिस नं० 100 पर सूचना दिया पुलिस मौके पर आयी तब तक मुल्जिमान उपरोक्त पुलिस को देखकर भाग गये मैने मकान के पीछे स्थित दो कमरे बरामदा बाउन्डी चबुतरा दीवाल जे०सी०बी० से तोडकर उपरोक्त मुल्जिमान गिरा दिया गया था मुल्जिमान उपरोक्त के कृत्य से काफी आतंक का माहौल बना हुआ है पुलिस जे०सी०बी० मशीन को थाना कोतवाली ले गयी मै और अगल बगल लोग प्रयासरत है मेरा करीब तीन लाख से उपर का नुकसान हो

गया अंत में इस घटना से ग्रस्त होकर मैंने थाना कोतवाली पर जाकर उक्त मुल्जिमान के विरुद्ध प्राथमिकी दर्ज करायी इस प्रकार बयान अंकित कराये।

14.09.17/ मजीद बयान वादी- श्री बट्टी प्रसाद गुप्ता पुत्र जुगुल किशोर नि० कासिमगंज पीएस कोतवाली जिला आजमगढ़ बदरियाफत बता रहे हैं कि जो एफआईआर मैंने लिखायी थी तथा जो बयान मैंने दिया था वही बयान मेरा है अभियुक्त आशुतोष कुमार द्विवेदी पुत्र रविन्द्र कुमार द्विवेदी नि० मिशन कम्पाउन्ड पीएस सिधारी जि० आजमगढ़ तथा राम कृष्ण मिश्रा पुत्र ए०एम० मिश्रा नि० डण्डी सडक पीएस कोतवाली जिला आजमगढ़ का पूरा पता यही है राकेश कुमार उर्फ बबलू का पूरा नाम पता अभी मालूम नहीं हो पाया है मेरे मुकदमें मे घटना के चश्मदीद गवाह मेरी पत्नी शिप्रा बरनवाल पत्नी बदरी प्रसाद गुप्ता तथा मेरा भाई अम्बरीश कुमार बरनवाल भी है जो मौके पर पहुंचे थे। अगर आप चाहे तो इन लोगो का भी बयान ले सकते है आलोक कुमार अब पुनः बयान देने को मना कर रहे है। यही मेरा बयान है।

15.10.17/ बयान गवाह- श्रीमती शिप्रा बरनवाल पत्नी श्री बट्टी प्रसाद गुप्ता नि० आसिकगंज पीएस कोतवाली जि० आजमगढ़ बदरियाफत बता रही है कि दि० 23.12.16 को सुबह घर पर थी कि तभी सूचना मिली की मेरे रोडवेज वाले मकान पर कुछ बवाल हो रहा है मैं तथा अम्बरीश तुरन्त मौके पर पहुंचे तो राजेश कुमार मौर्य आशुतोष द्विवेदी राकेश उर्फ बबलू संजीव सिंह रवि मिश्रा तन्मय पाण्डेय शैलेश उपाध्याय प्रार्थिनी का मकान जे०सी०बी० से गिरा रहे थे हम लोगो के द्वारा मना किया गया तो बहिन की भट्टी-2 गाली दिये तथा जान से मारने की धमकी दिये तथा मारने के लिए दौड़ाये किसी तरह हम लोग जान बचाकर भागे। यही मेरा बयान है।

बयान गवाह- श्री अम्बरीश कुमार पुत्र स्व० गुगुल किशोर गुप्ता नि० आसिफगंज पीएस कोतवाली जि० आजमगढ़ बदरियाफत बता रहे हैं कि दि० 23.12.16 को समय 7.30 एएम पर मैं घर पर था कि तभी सूचना मिली की रोडवेज वाले मकान पर कुछ लोग बवाल कर रहे हैं तो मैं अपने भाई की पत्नी को साथ लेकर तुरन्त मौके पर पहुंचा तो राजेश आशुतोष राकेश उर्फ बबलू संजीव सिंह रवि मिश्रा तन्मय पाण्डेय शैलेश उपाध्याय हम लोगो का मकान जेसीबी से गिरा रहे थे तथा मना करने पर गन्दी गन्दी गाली दिये तथा जान से मारने की धमकी दिये तथा मारने के लिए दौड़ाए तो हम लोग किसी तरह जान बचाकर भागे।”

14. As referred above, contents of FIR and statement of witnesses are appeared to have stated similar version of alleged occurrence. Alleged occurrence took place in public view and statement of some independent witnesses were also recorded,

however, they have not named all accused persons though have submitted that demolition took place.

15. In order to quash any criminal proceeding or charge sheet, Court has to invoke inherent powers of Section 482 Cr.P.C. and to consider that whether on basis of material collected during investigation, either no case is made out or on basis of material available, it could be a case of absolutely false implication i.e. criminal proceeding was initiated to wrecking vengeance.

16. Learned Advocates for applicants have assigned reasons for false implication of applicants that they are government employees and some litigation are pending in Revenue Court, therefore, they have been falsely implicated in criminal case. However, except details of one case i.e. civil dispute, no other detail of case pending before Revenue Court is placed on record, except some reports, however, they could not support the plea of false implication. There is no valid reason for their false implication, therefore, argument of false implication is hereby rejected.

17. Now the Court proceeds to consider whether on basis of evidence collected during investigation, a prima facie case is found against applicants or not. It is consistent case of complainant that a demolition took place on date of occurrence with help of JCB machine which was confiscated also. There is no denial of it on behalf of applicants. Witnesses in their respective statements have named applicants to be a part of unlawful assembly. Even independent witnesses though not named the accused persons but have corroborated so much as

that demolition took place. Presence of applicants and other accused are prima facie established.

18. At the stage of cognizance of an offence and to summon accused and others, trial Court is not bound to look whether there was any motive with applicants or accused persons to commit offence. The Court has to consider whether on basis of evidence collected during investigation, there is a prima facie case against applicants or not and as referred above, on basis of evidence collected during investigation, there is a prima facie case against them.

19. So far as collection of CCTV footage is concerned, it may be a lacunae on behalf of Investigating Officer but it would not be sufficient to hold that no occurrence took place or applicants were not present since there is no denial that police came on call on Dial 100 and a JCB machine was confiscated from place of occurrence. The Court has already rejected submission of false implication in earlier paragraphs. It is not a case where a civil dispute is being given a criminal colour since accused are not parties in civil dispute. Complainant could not get any benefit for making false implication of applicants and others.

20. There is merit in argument of learned AGA and learned counsel for opposite party that a fair investigation was conducted and involvement of some of named accused in FIR were found false. At this stage, to cause interference with a legally initiated criminal proceedings would amount to cause it a sudden death as well as at this stage, the Court cannot conduct a mini trial.

21. Aforesaid observations would have support from a judgment of Supreme Court in **Central Bureau of Investigation vs. Aryan Singh and others, 2023 SCC Online SC 379** and its relevant paragraphs are quoted below :-

“10. From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. **As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr. P.C., the Court is not required to conduct the mini trial.** The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution/investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. **At the stage of discharge and/or while exercising the powers under Section 482 Cr. P.C., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not”.**

11. One another reason pointed by the High Court is that the initiation of the criminal proceedings/proceedings is malicious. At this stage, it is required to be noted that the investigation was handed over to the CBI pursuant to the directions issued by the High Court. That thereafter, on conclusion of the investigation, the accused persons have been chargesheeted. Therefore, the High Court has

erred in observing at this stage that the initiation of the criminal proceedings/proceedings is malicious. **Whether the criminal proceedings was/were malicious or not, is not required to be considered at this stage. The same is required to be considered at the conclusion of the trial. In any case, at this stage, what is required to be considered is a prima facie case and the material collected during the course of the investigation, which warranted the accused to be tried.**

12. In view of the above and for the reasons stated above, when the High Court has exceeded in its jurisdiction in quashing the entire criminal proceedings and applying the law laid down by this Court in catena of decisions on exercise of the powers at the stage of discharge and/or quashing the criminal proceedings, the impugned common judgment and order passed by the High Court quashing the criminal proceedings against the accused is unsustainable and the same deserves to be quashed and set aside.”

22. In aforesaid circumstances, this Court does not find any ground to interfere with charge sheet dated 14.08.2017, cognizance order dated 16.01.2019 as well as summoning order dated 18.11.2019, therefore, these applications are **rejected** and interim orders passed therein are vacated.

23. Trial Court is directed to proceed further in Case No. 843 of 2019 (State vs. Rajesh Kumar Maurya and others) pending before Court of Chief Judicial Magistrate, Azamgarh in accordance with law.

24. Registrar (Compliance) to take steps.

Order date :- July 22, 2024

Nirmal Sinha

[Saurabh Shyam Shamsbery, J.]