

Neutral Citation No. - 2024:AHC-LKO:82600

A.F.R.

Reserved

Court No. - 11

Case :- APPLICATION U/S 482 No.5495 of 2023

Applicant :- Atul Kumar Singh @ Atul Rai

Opposite Party :- State Of U.P. Thru. Prin. Secy. Lko. U.P.

Counsel for Applicant :- Kaustubh Singh, Malay Prasad

Counsel for Opposite Party :- G.A.

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Sri Vishwajeet Singh, learned Senior Advocate, assisted by Sri Kaustubh Singh, Sri Pankaj Singh, Sri Suryansh Singh and Sri Dileep Srivastava, learned counsel for the applicant/ petitioner and Sri V.K. Shahi, learned Additional Advocate General of U.P. assisted by Sri Anurag Verma, A.G.A.-I and Sri Ajeet Singh, learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed for the following relief:-

“WHEREFORE, it is most respectfully prayed that this Hon'ble Court may very graciously be pleased to set-aside/quash the cognizance order dated 20.12.2021, passed by the learned Chief Judicial Magistrate, Lucknow, in Criminal Case No.97946 of 2021, under Sections 120-B, 167, 195-A, 218, 306, 504, 506 IPC which is annexed as Annexure No.1 and the chargesheet no.02 dated 27.08.2021 as annexed as Annexure No.2 respectively to this application; and subsequent proceedings of the Sessions Trial no.1188 of 2022 (State Vs Atul Singh alias Atul Rai) pending before the Court of Additional District Judge -19/ M.P.M.L.A. Court, Lucknow be also quashed.

Or,

to pass any order or direction, which this Hon'ble Court may deem just and proper to prevent the abuse of the process of the Court and to give effect to the provisions provided under the CrPC to secure the ends of justice.”

3. On the first date of admission i.e. 30.05.2023, this Court granted interim order, which reads as under:-

“1. Sri Malay Prasad assisted by Ms Saloni Mathur, Sri Piyush Shukla and Ms. Tanya Makkar, Advocates, for the applicant and Sri Manish Kumar Pandey, learned A.G.A. for the State, are present.

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

3. The instant application has been filed under section 482, Cr.P.C. seeking quashing of the cognizance order 20.12.2021, passed by the learned Chief Judicial Magistrate, Lucknow, in Criminal Case No., 97946 of 2021, under sections 120-B, 167, 195-A, 218, 306, 504, 506 I.P.C., the chargesheet no. 02 dated 27.08.2021 in pursuance thereof and subsequent proceedings of the Sessions Trial No. 1188 of 2022 (State v. Atul Singh alias Atul Rai) pending before the Court of Addl. District Judge-19/M.P.M.L.A. Court, Lucknow.

4. The aforesaid proceedings have been initiated on the basis of an F.I.R. lodged on 27.08.2021 bearing Case Crime No. 309 of 2021 at P.S. Hazratganj, Lucknow, against the applicant and co-accused Amitabh Thakur by a Senior Sub Inspector of Police stating that an F.I.R. bearing Case Crime No. 548 of 2019 under sections 376, 420, 504, 506, I.P.C., was registered against the applicant in P.S. Lanka, District Varanasi, in which a chargesheet has been submitted for mounting undue pressure on the victim. As many as seven cases were lodged against the victim from the side of the applicant. The victim has submitted applications alleging undue pressure being put on her by the accused persons and she committed self-immolation at New Delhi on 16.08.2021.

5. Learned counsel for the applicant has submitted that the applicant has already been acquitted in the said Case Crime No. 548 of 2019 lodged at P.S. Lanka, District Varanasi. Regarding self-immolation committed by the informant at New Delhi, a case bearing F.I.R.No. 113 of 2021, I.P.C. has been lodged in P.S. Tilak Marg, New Delhi.

6. The allegation leveled against the applicant in the F.I.R In question is that he had instigated the victim to commit suicide. The applicant is a resident of Varanasi and the deceased committed suicide at New Delhi. There is no allegation of any act committed at Lucknow, which may be said to be amounting to an offence committed by the

applicant within the territorial jurisdiction of the Courts at Lucknow.

7. Learned counsel for the applicant has placed reliance on section 177 of the Code of Criminal Procedure, which provides that "every offence shall ordinarily be inquired into and tried by a Court in whose jurisdiction it was committed."

8. The matter requires consideration.

9. Learned A.G.A. may file counter affidavit within 3 weeks. Rejoinder affidavit, if any, may be filed within 1 week thereafter.

10. List this case in the week commencing 10.07.2023.

11. Till the next date of listing, operation and implementation of the cognizance order 20.12.2021, passed by the learned Chief Judicial Magistrate, Lucknow, in Criminal Case No., 97946 of 2021, under sections 120-B, 167, 195-A, 218, 306, 504, 506 I.P.C., chargesheet no. 02 dated 27.08.2021 in pursuance thereof and subsequent proceedings of the Sessions Trial No. 1188 of 2022 (State v. Atul Singh alias Atul Rai) pending before the Court of Addl. District Judge-19/M.P.M.L.A. Court, Lucknow, shall remain in abeyance."

4. Notably, this Court while considering the fact that accused-applicant is a resident of Varanasi, the victim committed suicide at New Delhi and there is no allegation of any act committed at Lucknow, which may be said to be amounting to an offence committed by the applicant within the territorial jurisdiction of the courts at Lucknow, so in view of Section 177 Cr.P.C., which provides that every offence shall ordinarily be incurred into and tried by a court in whose jurisdiction it was committed granted interim order.

5. Sri Vishwajeet Singh, learned Senior Advocate, has submitted that the applicant has neither abetted the act of suicide nor has played any role in any kind of instigation to the said persons, who had allegedly attempted to commit suicide in front of the Hon'ble Supreme Court and eventually succumbed to the burn injuries caused by such incident. Consequently, the aforesaid incident resulted in lodging of

the F.I.R. in the present case which was registered as Case Crime No.309 of 2021 under Sections 120-B, 167, 195-A, 218, 306, 504 & 506 I.P.C. at P.S. Hazaratganj, District Lucknow on 27.08.2021. The aforesaid F.I.R. was lodged against the applicant as well as one Amitabh Thakur, who was an IPS officer and was posted as Inspector General of Police at that point of time.

6. Further submission is that the allegation in the aforesaid F.I.R. against the accused applicant was that Amitabh Thakur had taken money from the applicant herein namely Atul Rai for tarnishing the image of the prosecutrix. However, the prosecution failed miserably to bring forth even an iota of evidence in the case diary to this effect. The applicant has been in Jail ever since his arrest (he had surrendered) on 22.06.2019 and has not been released till date except for a period of five months from February 2024 till May 2024 when he was out on Medical Bail. Apart from this, he has been in continuous incarceration for the entire period when the incident of the alleged suicide had occurred on 16.08.2021.

7. Learned Senior Advocate has further submitted that the question of any physical contact between the applicant and co-accused Amitabh Thakur has neither been established nor proved by the prosecution. Even prima facie the ingredients of Section 120-B I.P.C. has not been fulfilled and the prosecution has failed to produce any documentary or other evidence to show any kind of connection between the applicant and the co-accused Amitabh Thakur. In fact the applicant categorically submits that he neither knows Amitabh Thakur nor has ever met with him in person and therefore, they are not even acquainted to each other. Hence, under these circumstances, the present chargesheet and cognizance order are liable to be quashed by this Court under Section 482 Cr.P.C. exercising extra-ordinary powers.

8. Learned counsel for the applicant has informed that on 01.05.2019, one FIR bearing F.I.R. No.548 of 2019 was registered

under Sections 420, 376, 504, 506 I.P.C. and Section 67-A of I.T. Act. In the aforesaid FIR, the allegation against the present applicant was that on 07.03.2018, the applicant raped the victim/ prosecutrix (since deceased).

9. The applicant had filed his nomination on 25.04.2019 as a joint candidate of the opposition on the post of Member of Parliament in General Election from Bahujan Samaj Party. Further, after winning in the General Assembly Election, the applicant surrendered before the learned Trial Court on 22.06.2019. On 05.03.2020, father of the applicant moved an application for conducting further investigation under Section 173 (8) Cr.P.C. In this application, it was categorically stated that there had been conspiracy behind prosecuting the applicant. In the aforesaid application, father of the applicant provided one audio clip which allegedly shows that the complainant/ victim had lodged the F.I.R. for grabbing money and also for tarnishing the image of the applicant. Pursuant to the aforesaid application dated 05.03.2020, the Circle Officer had published a report dated 08.08.2020 wherein the veracity of audio recording had been verified by the Forensic Science Laboratory and the aforesaid recording clearly established, as per learned counsel for the applicant, that the conspiracy was hatched against the applicant with a motive to cancel his nomination. After the report dated 08.08.2020 having been published and audio recording circulated, the victim (since deceased) had given a representation dated 10.11.2020 to the Senior Superintendent of Police, Varanasi saying that her witnesses were threatened and co-accused Amitabh Thakur had taken money from the applicant for preparing false evidence to produce before the learned Trial Court. She also stated that co-accused Amitabh Thakur is spreading false news on social media against her and other witnesses. As per the F.I.R., in the present case, when the victim/prosecutrix felt ashamed on account of the conduct of the present applicant and co-accused Amitabh Thakur and both instigated the victim and her friend to finish themselves, both have committed suicide in front of the Hon'ble Supreme Court of

India on 16.08.2021 making video of the incident making specific allegation against the applicant and co-accused Amitabh Thakur. After the aforesaid unfortunate incident, the Joint Committee, constituted for ascertaining the reason behind the suicide of both the aforesaid persons, had submitted its report on 27.08.2021. Pursuant to the Joint Committee report, the F.I.R. in the present case was lodged against the applicant wherein it has been alleged that co-accused Amitabh Thakur in connivance with the applicant had published the report of the Circle Officer dated 08.08.2020 on the social media but moreover, Amitabh Thakur was preparing false evidence to produce before the learned Trial Court in the earlier FIR bearing FIR No.548 of 2019 (supra). On 06.08.2022, the Trial Court acquitted the present applicant in FIR No.548 of 2019 (supra). Learned counsel has informed that the criminal appeal against the acquittal order is pending consideration before the High Court.

10. Sri Singh has submitted that Section 177 Cr.P.C. reiterates the well-established common law rule referred to in Halsbury's Laws of England that the proper and ordinary venue for the trial of a crime is the area of jurisdiction in which on the evidence, the facts occur and which are alleged to constitute the crime. Therefore, in the present case, the crucial question is as to whether any part of the cause of action arose within the jurisdiction of the court concerned. In terms of Section 177 Cr.P.C it is the place where the offence has been committed and in essence it is the cause of action for initiation of the proceedings against the accused.

11. Learned counsel for the applicant has further submitted that the Apex Court in re; **Y. Abraham Ajith and Others Vs. Inspector of Police, Chennai and Anr., (2004) 8 SCC 100**, has been pleased to deal with the aforesaid issue and hold that the expression "cause of action" means every fact which it would be necessary for the complainant to prove if traversed in order to support his right or grievance to the judgement of the Court. Every fact, which is

necessary to be proved, as distinguished from every piece of evidence which is necessary to prove such fact, comprises in "cause of action". In other words, it is settled law that cause of action consists of bundle of facts, which taken with the law applicable to them, gives the allegedly affected party a right to claim relief against the opponent. Hence it must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or arise. Therefore, in the present case, when the aforesaid legal principle is applied, the inevitable conclusion is that no part of cause of action arose in Lucknow and therefore, the learned Trial Court has no jurisdiction to deal with the matter.

12. Further submission of learned counsel for the applicant is that on the territorial aspect under Section 177 Cr.P.C, the Apex Court in re; **Kaushik Chatterjee Vs. State of Haryana and others, (2020) 10 SCC 92**, has been pleased to hold that while jurisdiction of civil court is determined by; (i) Territorial, (ii) Pecuniary limits, the jurisdiction of Criminal Court is determined by; (i) the offence and/or (ii) the offender. Similar view has been taken by the Apex Court in re; **Rana Ayyub Vs. Directorate of Enforcement, (2023) 4 SCC 357**, wherein the Apex Court in para-34 held as under:-

“34. As pointed out by this Court in Kaushik Chatterjee v. State of Haryana, (2020) 10 SCC 92, the question of territorial jurisdiction in criminal cases revolves around: (i) place of commission of the offence; or (ii) place where the consequence of an act, both of which constitute an offence, ensues; or (iii) place where the accused was found; or (iv) place where the victim was found; (v) place where the property in respect of which the offence was committed, was found; or (vi) place where the property forming the subject-matter of an offence was required to be returned or accounted for, etc. according as the case may be.”

13. So far as the offence of criminal conspiracy is concerned, learned Senior Advocate has stated that Section 120B of I.P.C. prescribed the Punishment for Criminal Conspiracy which by itself is

an independent offence, punishable separately from the main offence. In other words, the offence of Criminal Conspiracy can be established by direct evidence or by circumstantial evidence.

14. Further submission is that Section-10 of the Evidence Act introduces the doctrine of agency and will be attracted only when the court is satisfied that there is a reasonable grounds to believe that two or more persons have conspired together to commit an offence or an achievable ground, i.e. there should be prima facie evidence that the person was a party to the conspiracy before his acts can be used against the co-conspirator.

15. Learned Senior Advocate has further submitted that it is well settled law that a conspiracy is hatched in secrecy and prosecution cannot be burdened to establish the same with direct piece of evidence. The prosecution can discharge its onus by relying upon the circumstances to establish existence of conspiracy. However, the circumstances relied upon by the prosecution have to be of a definite character which unerringly pointing towards the guilt of the accused. Hence, the prosecution has to produce evidence not only to show that the accused has knowledge of object of conspiracy but also of the agreement. In the charge of conspiracy, the Court has to guard itself against the danger of unfairness to the accused. By means of evidence in conspiracy, which is otherwise inadmissible in the Trial of any other substantive offence, the prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to cogent and convincing evidence against each one of the accused charged with the offence of conspiracy.

16. Further submission of learned counsel for the applicant is that perusal of Section 120-A of the I.P.C. would make it manifestly clear that for imputing a person as a "conspirator" there has to be existence

of "an agreement" between two or more persons either to do "an illegal act" or to do "legal act through illegal means". Since, legislature has not provided any deeming provision to draw presumption in favor of existence of conspiracy, the prosecution cannot be absolved of the responsibility of bringing sufficient circumstances pointing towards existence of an agreement amongst the conspirators to do an "illegal act" or "a legal act through illegal means". Apart from commission of "acts", prosecution is also vested with a responsibility to bring evidence on record of the crime committed in pursuance of "an agreement" made between the accused persons who were parties to the alleged conspiracy. Hence, it is a well settled proposition of law that an offence of conspiracy cannot be deemed to have been established on mere suspicion, surmises or inferences which are not supported by cogent or acceptable evidence.

17. In support of his aforesaid arguments, reliance has been placed by the learned counsel for the applicant upon the judgment of the Apex Court in re; **V.C. Shukla Vs. State (Delhi Administration), (1980) 2 SCC 665**, the Apex Court has been pleased to hold that to prove criminal conspiracy there must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence; when the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. More importantly, as in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubts. Further, for establishing a charge of Criminal Conspiracy, the circumstances in a case, when taken together on their face value, should indicate the meeting of the minds between the conspirator for the intended objects of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few

bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted, and illegal acts done were in furtherance of the object of conspiracy hatched. In other words, for the offence of conspiracy, some kind of physical manifestation of agreement is required to be established.

18. In the case of **State of Kerala Vs. P. Sugathan & Anr., (2000) 8 SCC 203**, the Apex Court has been pleased to hold that criminal conspiracy can be established on the basis of circumstantial evidence meaning thereby that circumstances should give rise to a conclusive inference of an agreement between two or more persons to commit an offence and such circumstances should be prior in time than actual commission of offence. Since, conspiracy is a continuing offence and any act committed by any of the conspirators during subsistence of the conspiracy would attract the ingredients of Section 120 B of the I.P.C.

19. The Apex Court in re; **Bhagwan Swarup Lal Bishan Lal and Ors. Vs. State of Maharashtra, (1964) 2 SCR 378**, has been pleased to hold in para 8 of the aforesaid judgment that the essence of conspiracy is that there should be an agreement between person to do one or other of the acts described in Section. The said agreement may be proved by direct evidence or may be inferred from act and conduct of the parties.

20. In the case of **State (NCT of Delhi) Vs. Navjot Sandhu alias Afsan Guru, (2005) 11 SCC 600**, the Apex Court has been pleased to hold in para 101 with regard to criminal conspiracy that "one more principle which deserves notice is that the cumulative effect of the proved circumstances should be taken into account in determining the guilt of the accused rather than adopting an isolated approach to each of the circumstances. Of course, each one of the circumstances, should be proved beyond reasonable doubt. Lastly, in regard to appreciation of evidence relating to the conspiracy, the Court must

take care to see that the acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution.

21. Learned Senior Advocate has, therefore, submitted that lodging the FIR against the present applicant, filing charge sheet against him and taking cognizance by the learned Trial Court are abuse of the process of the Court, therefore, in view of the dictum of the Apex Court in re; **State of Haryana Vs. Bhajan Lal, 1992 Sppl 1 SCC 335**, charge sheet and cognizance order may be quashed. Learned Senior Advocate has submitted that the Apex Court in re; **Varala Bharath Kumar & Anr. Vs. State of Telangana & Anr., (2017) 9 SCC 413**, has been pleased to hold in paragraphs 6 & 7 that the extraordinary power under Article 226 or inherent power under Section 482 of the Code of Criminal Procedure can be exercised by the High Court, either to prevent abuse of process of the court or otherwise to secure the ends of justice. Where allegations made in the First Information Report/the complaint or the outcome of investigation as found in the Charge Sheet, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out the case against the accused; where the allegations do not disclose the ingredients of the offence alleged; where the uncontroverted allegations made in the First Information Report or complaint and the material collected in support of the same do not disclose the commission of offence alleged and make out a case against the accused; where a criminal proceeding is manifestly attended with malafide 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, the power under Article 226 of the Constitution of India or under Section 482 of Code of Criminal Procedure may be exercised. Further, inherent jurisdiction under Section 482 of the Code though wide has to be exercised sparingly, carefully or with caution and only when such exercise is justified by the tests specifically laid down

under Section 482 itself. It is to be exercised *ex debito justitiae* to do real and substantial justice, for the administration of which alone courts exist. The court must be careful and see that its decision in exercise of its power is based on sound principles. The inherent powers should not be exercised to stifle a legitimate prosecution. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extra ordinary jurisdiction of quashing the proceedings at any stage.

22. Sri Vishwajeet Singh, learned Senior Advocate, has further submitted that the law governing Section 306 of the I.P.C. is well settled and deals with the abetment of suicide. The basic ingredients to constitute an offence u/s 306 I.P.C are suicidal death and abetment thereof. Similarly, abetment of a thing is defined under Section 107 I.P.C. The scope and ambit of Section 107 I.P.C. and its co-relation with Section 306 I.P.C. has been discussed repeatedly by the Apex Court. In the case of **S.S.Cheena Vs. Vijay Kumar Mahajan & Anr., (2010) 12 SCC 190**, it has been observed in para 25 as under:-

"25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide."

23. Similarly in another case of **M. Arjunan Vs. State Represented by its Inspector of Police, (2019) 3 SCC 315**, the Apex Court while explaining the necessary ingredients of Section 306 of the I.P.C. in detail, observed as under:-

"7. The essential ingredients of the offence under Section 306 I.P.C. are: (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, Insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied the accused cannot be convicted under Section 306 IPC."

24. In the backdrop of the aforesaid facts and circumstances, learned counsel for the applicant has stated that the impugned F.I.R. No.0309 of 2021 (supra), which has been filed at Lucknow and charge sheet has also been filed against the present applicant and co-accused Amitabh Thakur on 27.08.2021 and the learned Trial Court took cognizance of the aforesaid charge sheet on 20.12.2021 is patently illegal and unwarranted in view of Section 177 Cr.P.C. Therefore, pursuant to the charge sheet and cognizance thereof, the trial should not be conducted at Lucknow.

25. *Per contra*, Sri V. K. Shahi, learned Additional Advocate General of U.P., assisted by Sri Anurag Verma, learned A.G.A., has submitted that since after suicide of aforesaid two persons on 16.08.2021, the State Government constituted Joint Committee on 27.08.2021 at Lucknow and pursuant to the report of the Joint Committee, FIR No.0309 of 2021 (supra) has been lodged at Lucknow. The victim (since deceased) met with co-accused Amitabh Thakur at Lucknow requesting him not to defame her circulating the report dated 08.08.2020 of the Circle Officer on the social media and had said to him that if he would do the character assassination of the victim, she will have no other option to commit suicide and for that, co-accused Amitabh Thakur and present applicant would be responsible inasmuch as it is the present applicant, who may be beneficiary if co-accused Amitabh Thakur prepares false evidences against the victim to produce in the trial proceedings relating to FIR

No.548 of 2019 (supra). The applicant and co-accused Amitabh Thakur got success in the aforesaid plan as the victim alongwith her friend committed suicide on 16.08.2021 and the learned Trial Court acquitted the present applicant on 06.08.2022.

26. Therefore, Sri Shahi has submitted that in the aforesaid circumstances, the FIR could have been lodged at Lucknow, thereafter the charge sheet may be filed and cognizance might be taken by the learned Trial Court at Lucknow. Sri Shahi briefly referred Sections 177, 178, 179, 180 & 460 Cr.P.C., which read as under:-

“177. Ordinary place of inquiry and trial.— Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

178. Place of inquiry or trial.—(a) When it is uncertain in which of several local areas an offence was committed, or

(b) where an offence is committed partly in one local area and partly in another, or

(c) where an offence is a continuing one, and continues to be committed in more local areas than one, or

(d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

179. Offence triable where act is done or consequence ensues.—When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued.

180. Place of trial where act is an offence by reason of relation to other offence.—When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, the first-mentioned offence may be inquired into or tried by a Court within whose local jurisdiction either act was done.”

460. Irregularities which do not vitiate proceedings.—If any Magistrate not empowered by law to do any of the following things, namely:—

(e) to take cognizance of an offence under clause (a) or clause (b) of sub-section (1) of section 190.

27. He has also referred Section 462 Cr.P.C., which reads as under:-

“462. Proceedings in wrong place.—No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.”

28. Sri Shahi has apprised that the applicant approached this Court seeking bail by filing Bail Application No. 5473 of 2022, which was rejected by this Court vide order dated 07.06.2022. The applicant again approached this Court seeking bail by filing the Second Bail Application No.1564 of 2023, which was rejected vide order dated 14.03.2023. Subsequently, the applicant filed the Third Bail Application No.12425 of 2023, which was also rejected by this Court vide order dated 17.05.2024. The applicant then assailed the order dated 17.05.2024 before the Apex Court, but the same was rejected vide order dated 03.06.2024. The rejection of the bail applications by this Court as well as by the Hon'ble Supreme Court, indicates the prima facie complicity of the applicant in the offence.

29. While rejecting the first bail application of the present applicant vide order dated 07.06.2022 passed in Criminal Misc. Bail Application No.5473 of 2022, this Court briefly considered the facts and criminal history of the applicant. Relevant paragraphs of the order dated 07.06.2022 read as under:-

“4. It is stated in para 38 of the affidavit that out of 23 cases, only 12 are still pending against the accused-applicant. The close scrutiny of the averments of para 38 of the affidavit would reveal that though the accused-applicant has secured acquittal in some of the cases against him but some of the heinous cases including

murder and rape etc., are still pending against him in the Courts.

7. On 10.11.2020, the victim gave an application to the Senior Superintendent of Police, Varanasi alleging that co-accused-Amitabh Thakur, an Ex IPS officer was manufacturing false documents/evidence against the victim and her friend to favour of present accused-applicant on monetary consideration. It was alleged that prosecutrix's dignity, honour and image were being besmirch and tarnished. The accused and co-accused were abating and drawing her close to commit suicide. She was being continuously harassed physically and mentally and subjected to cruelty to change her stand before the Court. The accused-applicant and his henchman were employing all kinds of undue pressure on her to change her stand before the Court and turn hostile. She made allegations against the co-accused-Amitabh Thakur, who in active connivance with the present accused-applicant, extended threat to her life. She also said that she would be compelled to commit suicide because of the accused-applicant and co-accused-Amitabh Thakur.

8. The victim and her friend-Satyam Prakash Rai, thereafter, on 16.08.2021 attempted to commit suicide outside the Gate No.6 of the Supreme Court and went live on Facebook making serious allegations against the accused-applicant and co-accused-Amitabh Thakur. Statements made by two victims live on Facebook have been treated as dying declarations.

9. The Director General of Police constituted a Two Members Committee consisting of Director General, U.P. Police Recruitment and Promotional Board and Additional Director General, Women and Child Security Organization, Lucknow. The said Committee submitted its report on 27.08.2021. On the basis of said report, a written complaint was given by Sub Inspector Daya Shankar Dwivedi at Police Station Hazratganj, which is the basis of the FIR in question registered against the accused-applicant and co-accused.

10. Report of the two members team on the basis of which the FIR in question has been registered would mention that Bharat Singh, father of the accused-applicant gave an application on 03.03.2020 to S.S.P. Varanasi requesting him to get further investigation conducted under Section 173(8) Cr.P.C. in FIR No.548 of 2019 (supra) registered against the accused-applicant.

11. Then, Senior Superintendent of police, Varanasi marked the said application to the then Circle Officer, Bhelupur, Mr.Amresh Kumar Singh. Mr.Amresh Kumar

Singh prepared a report on the application and in last paragraph of his report said that the FIR No.548 of 2019 (supra) was falsely lodged in conspiracy of the prosecutrix, her friend, Satyam Prakash Rai, Angad Rai and Vijay Shankar Tiwari and recommended for fresh investigation under Section 173(8) Cr.P.C. The case was pending in the Court but the Circle Officer, Amresh Kumar Singh made available the said report to co-accused-Amitabh Thakur and other persons under Right to Information Act despite the case being pending in the Court. This report was made public to defame the victim/prosecutrix and tarnish her character and dignity. It was made public to weaken the case against the accused-applicant. The Report of C.O. Bhelupur was a preliminary report on the application for further investigation, and final decision for further investigation was yet to be taken but the said report was made public in order to put undue pressure on the prosecutrix and her friend so that they should not support the prosecution case against the accused-applicant.

12. It is alleged that when the accused-applicant and his goons were not successful in breaking down/winning the victim and the witness, they put all kind of pressure and tortured them physically and mentally. Circle Officer, Bhelupur also assisted the accused-applicant. The victim and her friend were so much harassed and tortured that they became desperate as they perceived that they would not get justice. They had fears about their lives. Their dignity, character and image were being tarnished and besmirch. Under these circumstances, they went to Supreme Court, highest seat of justice and attempted suicide outside the Supreme Court gate and later on they died during the course of treatment. Co-accused-Amitabh Thakur ex-IPS officer has been granted bail by this court vide order dated 14.03.2022 but the case of the accused-applicant is different from the co-accused.”

30. Further submission of Sri Shahi is that the applicant after rejection of third bail application, approached this Court by filing a petition for Habeas Corpus bearing No.235 of 2024, seeking his release. However, after a short period of time, the petition was dismissed as withdrawn vide order dated 19.11.2024.

31. Sri Shahi has submitted that registration of the FIR in the instant case was preceded by an inquiry conducted by a two-member committee (Annexure No.CA-4).

32. Further submission is that the present applicant is having checkered criminal history of 23 cases and that criminal history was elaborately considered by this Court while rejecting first and second bail applications.

33. The victim and her friend had visited the house of co-accused Amitabh Thakur in Lucknow and had given their live statements on Facebook (Annexure No.CA-5).

34. Further submission is that the victim in her statement, before setting herself ablaze, has stated that there was a conspiracy between the present applicant and co-accused Amitabh Thakur, she had expressed apprehension that witnesses were being threatened, she was being instigated to commit suicide and vital pieces of evidences were being destroyed by the accused persons (Annexure No.CA-3).

35. On the point of criminal conspiracy, Sri Shahi has referred the dictum of the Apex Court in re; **Ram Narayan Popli Vs. Central Bureau of Investigation, (2003) 3 SCC 641**, wherein the Apex Court has observed that the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.

36. Sri Shahi has submitted that the power of this Court enshrined under Section 482 Cr.P.C. is an inherent power to secure the ends of justice or to prevent any abuse of the process of any Court. This is an extra-ordinary power of the High Court like Article 226 of the Constitution of India but at the same time, this Court must be much careful and cautious before invoking this power to ensure that if this power is not invoked, the litigant would suffer irreparable loss and injury and it would be manifest injustice and abuse of the process of

the law. Therefore, the Apex Court has observed in catena of cases that this power should be invoked very sparingly and cautiously.

37. Reliance has also been placed by Sri Shahi upon the judgments of the Apex Court in re; **State of Orissa Vs. Debendra Nath Padhi**, MANU/SC/1010/2004, **State of Rajasthan Vs. Ashok Kumar Kashyap**, (2021) 11 SCC 191, **Sajjan Kumar Vs. Central Bureau of Investigation**, (2010) 9 SCC 368, **R.A.H. Siguran Vs. Shankare Gowda alias Shankara and Anr.**, (2017) 16 SCC 126, **Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi)**, MANU/SC/1453/2009, **Central Bureau of Investigation Vs. Aryan Singh**, AIR 2023 SC 1987 and **Rajeev Kourav Vs. Baisahab and Ors.**, MANU/SC/0163/2020. Sri Shahi has submitted that the Apex Court in re; **Rajeev Kourav** (supra) has held that exercise of power under Section 482 Cr.P.C. to quash a criminal proceedings is permissible only when an allegation made in the FIR, or the charge sheet does not constitute the ingredients of the offence/offences alleged. The evidence produced by the accused in his defense cannot be looked into by the Court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is equally trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 Cr.P.C. for quashing criminal proceedings.

38. Therefore, Sri Shahi has submitted that in view of the settled provisions of law as mentioned herein above, assuming, though not conceding any defect whatsoever, in the investigation, is not sufficient to unsettle and disturb the cognizance taken by the Trial Court and the chargesheet submitted by the police. Bare perusal of the live statements of the victim and her friend before their death clearly carve out the complicity of the applicant in such heinous and gruesome offences. Therefore, the instant application is liable to be dismissed on multiple grounds.

39. Having heard learned counsel for the parties and having perused the material available on record vis-a-vis the dictums of the Apex Court referred by the parties, I am also of the considered opinion that the court should not, except in extra-ordinary circumstances, exercise its jurisdiction under Section 482 Cr.P.C., so as to quash the prosecution proceedings after they have been launched.

40. The Apex Court in re; **State of U.P. v. O.P. Sharma, (1996) 7 SCC 705**, in paras 12 & 13 has observed as under:-

“12. In State of Bihar v. Rajendra Agrawalla [Crl. A. No. 66 of 1996, decided on 18-1-1996] this Court observed as under:

“It has been held by this Court in several cases that the inherent power of the court under Section 482 of the Code of Criminal Procedure should be very sparingly and cautiously used only when the court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the court, if such power is not exercised. So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the first information report or the complaint together with the other materials collected during investigation taken at their face value, do not constitute the offence alleged. At that stage it is not open for the court either to shift the evidence or appreciate the evidence and come to the conclusion that no prima facie case is made out.”

13. In Mushtaq Ahmed v. Mohd. Habibur Rehman Faizi [JT (1996) 1 SC 656] this Court held as under:

“... According to the complaint, the respondents had thereby committed breach of trust of government money. In support of the above allegations made in the complaint copies of the salary statements of the relevant periods were produced. In spite of the fact that the complaint and the documents annexed thereto clearly made out a, prima facie case for cheating, breach of trust and forgery, the High Court proceeded to consider the version of the respondents given out in their petition filed under Section 482, CrPC vis-à-vis that of the appellant and entered into the debatable area of deciding which of the version was true, — a course wholly impermissible... .”

41. The Hon'ble Apex Court in re; **Amanullah and Another v. State of Bihar and Others, (2016) 6 SCC 699**, while considering the scope of Section 482 Cr.P.C. has observed in paras 25 to 29 as under:-

“25. A careful reading of the material placed on record reveals that the learned CJM took cognizance of the offences alleged against the accused persons after a perusal of the case diary, charge-sheet and other material placed before the court. The cognizance was taken, as a prima facie case was made out against the accused persons. It is well settled that at the stage of taking cognizance, the court should not get into the merits of the case made out by the police, in the charge-sheet filed by them, with a view to calculate the success rate of prosecution in that particular case. At this stage, the court's duty is limited to the extent of finding out whether from the material placed before it, the offence alleged therein against the accused is made out or not with a view to proceed further with the case.

26. The proposition of law relating to Section 482 CrPC has been elaborately dealt with by this Court in Bhajan Lal case [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . The relevant paras 102 and 103 of which read thus : (SCC pp. 378-79)

“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 extraordinary 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 FIR 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 FIR 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 Act concerned (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 Act concerned, 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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

27. Further, this Court in Rajiv Thapar v. Madan Lal

Kapoor [Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158] has laid down certain parameters to be followed by the High Court while exercising its inherent power under Section 482 CrPC, in the following manner : (SCC pp. 347-49, paras 29-30)

“29. The issue being examined in the instant case is the jurisdiction [Madan Lal Kapoor v. Rajiv Thapar, 2008 SCC OnLine Del 561 : (2008) 105 DRJ 531] of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/ complainant's case without allowing the prosecution/ complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/ complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer

for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1. Step one : whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two : whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three : whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four : whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused.”

(emphasis supplied)

28. *After considering the rival legal contentions urged by both the parties, case law referred to supra and the material placed on record, we are of the view that the High Court has exceeded its jurisdiction under Section 482 CrPC. It has erred in quashing the cognizance order passed by the learned CJM without appreciating the material placed before it in the correct perspective. The High Court has ignored certain important facts, namely, that on 17-10-2008, Appellant 1 was allegedly threatened by the accused Mukhtar for which FIR No. 104 of 2008 was registered against him for the offences punishable under Sections 25 and 26 of the Arms Act, 1959. Further, there are statements of various witnesses*

made under Section 164 CrP3C, before a Judicial Magistrate, to the effect that the deceased has been murdered by none other than her husband Mukhtar. The evidence collected by the IO by recording the statements of the prosecution witnesses, filed along with the charge-sheet was duly considered by the learned CJM before taking cognizance and therefore, the same should not have been interfered with by the High Court in exercise of its inherent power under Section 482 CrPC.

29. Further, the High Court has failed to take into consideration another important aspect that the case at hand relates to the grave offence of murder and that the criminal proceedings related thereto should not lightly be interfered with, which is a well-settled proposition of law.”

42. From the material available on record, I am not convinced that there would be manifest injustice or there would be abuse of the process of the court, if such power is not exercised in this case.

43. So far as the question of territorial jurisdiction is concerned, on the basis of material available on record, I am of the opinion that part cause of action accrued in the territorial jurisdiction at Lucknow as the victim and her friend had visited the house of co-accused Amitabh Thakur in Lucknow with regard to earlier FIR No.548 of 2019 (supra) lodged against the present applicant and had given their live statements on Facebook and before setting herself ablaze in front of the Hon’ble Supreme Court, New Delhi, the victim had stated that there was a conspiracy between the present applicant and co-accused Amitabh Thakur and had expressed apprehension that witnesses were being threatened, she was being instigated to commit suicide and vital pieces of evidences were being destroyed by the accused persons.

44. The other grounds taken by the learned counsel for the applicant e.g. criminal conspiracy, abetment of suicide, the same shall be decided by the learned Trial Court after evaluating the evidences, but this Court does not find any substance to invoke extra-ordinary inherent jurisdiction enshrined under Section 482 Cr.P.C.

45. It is made clear that the observations made herein-above shall not affect the trial in any manner.

46. Accordingly, the instant application fails and is **dismissed**.

47. However, learned Trial Court is directed to conduct and conclude the trial, expeditiously, without giving any unnecessary adjournment to any of the parties.

48. No order as to costs.

[Rajesh Singh Chauhan,J.]

Order Date :- 10.12.2024
RBS/-