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Judgment reserved on 17.12.2021

Judgment delivered on 24.12.2021

In Chamber

Case :- APPLICATION U/S 482 No. - 2955 of 2007
Applicant :- Rakesh Kumar Shukla
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Ashok Kumar Dwivedi
Counsel for Opposite Party :- Govt. Advocate,U.B.Singh,V.B. Rao

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri. Ashok Kumar Dwivedi, learned Counsel for the Applicant and learned AGA for the State-respondents.

2. By means of the present application under Section 482 of the Criminal Procedure Code the applicant has prayed for quashing of the charge sheet dated 18.01.2007 in Criminal Case No. 305 of 2007 (State vs. Rakesh Kumar Shukla) under Sections 504 and 506 IPC, Police Station Kotwali Nagar, District Banda, pending in the Court of Chief Judicial Magistrate, Banda, which has been instituted by an application under Section 156 (3) Cr.P.C., filed on 25-11-2006 by the opposite party number 2.

3. The accused-applicant and the informant-opposite party no.2 are neighbors. The applicant lives in House No. B-81 whereas the informant lives in House No. B-82, Awas Vikas Colony, P.S. Kotwali, District-Banda. The informant/respondent no.2 had filed an application under Section 156 (3) Cr.P.C. against the applicant alleging that the applicant had fired at him with the intention to kill him and when several persons from the locality gathered there, he went away threatening to kill the informant. In furtherance of the aforesaid application, a First Information Report was lodged. The applicant had filed Criminal Misc. Application No. 15344 of 2006 and on 27.11.2006, this Court passed the following order:

> *"Heard Sri R.R.Singh, counsel for the applicant and A.G.A.*
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> *Having heard the submissions and perusing the materials on record, this application is finally disposed of with the direction that pursuant to the impugned order dated 19.10.2006 passed by C.J.M., Banda on the*

application of opposite party no.2 under Section 156 (3) Cr.P.C., if any case has been registered against the applicant at P.S. registered against the applicant at P.S. Kotwali, district-Banda, then investigation in the matter may go on, but the applicant shall not be arrested till submission of the report under Section 173(2), Cr.P.C. provided he cooperates with the investigation."

4. An investigation was carried out pursuant to the aforesaid FIR and statements of six witnesses were recorded. After completion of investigation, the police has submitted the charge sheet no. 11/2007 on 18.11.2007 stating that upon investigation, from the statements of the witnesses and inspection of the site of occurrence, commission of the offence under Section 307 IPC was not found and merely offences under Sections 504 and 506 IPC was found to have been committed. The charge sheet has been forwarded to the court for trial of the applicant.

5. Sri Ashok Kumar Dwivedi, learned counsel for the applicant has argued that although originally the first information report was lodged under Sections 307, 504, 506 IPC but during investigation, the allegation of commission of offence under Section 307 IPC was found to be false and only a case under Sections 504 and 506 IPC was found to be made out against the applicant, both of which are non-cognizable offences and, therefore, the case against the applicant can only proceed as a complaint. In support of his submission, he has invited attention of the Court to the Explanation appended to Section 2 (d) of Cr.P.C. In order to appreciate his submission, the relevant provision of Cr.P.C. is being reproduced below: -

"(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Explanation.—A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant"

6. Ashok Kumar Dwivedi has placed reliance on a judgment of this Court in **Dr. Rakesh Kumar Sharma vs. State of U.P. and another** reported in **2007 (9) ADJ 478,** in which case originally the FIR was lodged under

Section 307. However, after investigation the Investigating Officer came to the conclusion that no offence under Section 307 IPC was made out and only a case under Section 504 IPC was made out against the accused and so a charge sheet under Section 504 IPC was submitted against the applicant. In this backdrop a coordinate Bench of this Court held that the Magistrate shall not proceed with the case as a state case but he shall proceed with it as a complaint case as provided in the explanation to Section 2(d) Cr.P.C.

7. However, in the present case, apart from an offence under Section 504, an offence under Section 506 IPC has also been found to have been committed. Although in the first schedule appended to the code of criminal procedure, 1973 Section 506 is mentioned to be a non-cognizable offence, the Uttar Pradesh Government has issued a Notification No. 777/VIII-9 4(2)-87, dated July 31,1989, published in U.P. Gazette, Extra Part-4, Section (Kha), dated 2nd August, 1989 by which the Section 506 IPC was made cognizable and non bailable.

8. The aforesaid Notification No. 777/VIII 9-4 (2)-87 dated July 31, 1989, published in the U.P. Gazette, Extra, Part-4, Section (kha) dated 2nd August, 1989 states as follows:

> *"In exercise of the powers conferred by Section 10 of the Criminal Law Amendment Act, 1932 (Act No. XXIII of 1932) read with Section 21 of the General Clauses Act, 1897 (Act No.10 of 1897) and in super session of the notifications issued in this behalf, the Governor is pleased to declare that any offence punishable under Section 506 of the Indian Penal Code when committed in any district of Uttar Pradesh, shall notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Act No.2 of 1974) be cognizable and non-bailable."*

9. The aforesaid notification has been issued under Section 10 of the Criminal Law Amendment Act, 1932 (Act No. 23 of 1932), which provides as follows: "10. Power of State Government to make certain offences cognizable and non-bailable.—

> (1) The State Government may, by notification4 in the Official Gazette, declare that any offence punishable under section 186, 188, 189, 190, 228, 295A, 298, 505, 506 or 507 of the Indian Penal Code (45 of 1860), when committed. in any area specified in the notification shall, notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), be cognizable, and thereupon the Code of Criminal

Procedure, 1898, shall, while such notification remains in force, be deemed to be amended accordingly.

(2) The State Government may, in like manner and subject to the like conditions and with the like effect, declare4 that an offence punishable under section 188 or section 506 of the Indian Penal Code (45 of 1860), shall be non-bailable."

10. The validity of the aforesaid Notification dated 31-07-1989 was examined by a Division Bench of this Court in Virendra Singh versus State of U.P., 2002 Indian Law reports Allahabad Series 653 2002 (2) UC 453 and in that case, this Court held as follows: -

"6. Section 10 of the Criminal Law Amendment Act, 1932 does not give power to the State Government to amend by a notification any part of the Code of Criminal Procedure, 1973. Since the Code of Criminal Procedure of 1898 has been repealed by Section 484 of the Code of Criminal Procedure. Act, 1973 we are of the opinion that Section 10 of the Criminal Law Amendment Act, 1932 has become redundant and otiose. Hence in our opinion no notification can now be made under Section 10 of the Criminal Law Amendment Act, 1932. Any such notification is illegal for the reason given above. Hence we declare notification No. 777/VIII-94(2)-87, dated July 31, 1989, published the U.P. Gazette, Extra Part-4, Section (kha), dated 2nd August, 1989 by which Section 506 I.P.C. was made cognizable and non-bailable to be illegal. Section 506 I.P.C. has to be treated as bailable and non-cognizable offence."

11. However, in the case of **Meta Sewak Upadhyay versus State of U.P., 1995 CJ (All) 1158,** a Full Bench of this Court examined the validity of the aforesaid Notification. It may be relevant to note that although the Full Bench has at some places mentioned the date of the Notification as August 2, 1989, which is actually the date of publication of the Notification in the Official Gazette and at some places the date of the Notification is mentioned as July 31, 1989 but the contents of the Notification are the same as those which have been reproduced above. The Full Bench held as follows: -

"61.There are two notifications of December 29, 1932 and August 2, 1989 which came to be issued in exercise of the powers conferred by Section 10 of the Act of 1932. Whereas, the first notification was made applicable only to a few districts, mentioned therein, the second notification of August 2, 1989 which was issued in super session of the notifications earlier issued in this behalf, states that the Governor is pleased to declare that any offence punishable under Section 506 of the Indian Penal Code (IPC) when committed in any district of Uttar Pradesh, shall notwithstanding anything contained in the Criminal Procedure Code,

1973, be cognizable and non-bailable. From the second notification it is, therefore, clear that that was issued in super session of the notification of December 29, 1932 and the effect of this notification is that the offence punishable under Section 506, IPC when committed at any place through, out the Uttar Pradesh, shall notwithstanding anything contained in the Criminal Procedure Code, be cognizable and non-bailable. In the first Schedule to the Criminal Procedure Code, 1973, the offence under Section 506 IPC is described as non-cognizable and bailable, but by virtue of Sec. 10 of the Act of 1932, the same has been declared for the entire Uttar Pradesh as cognizable and non-bailable by the notification of August 2, 1989. Sec. 10 of the Act of 1932 confers powers of the State Government to declare by notification in the official Gazette that an offence punishable under Section 506 IPC inter alia when committed in any area specified in the notification, shall notwithstanding anything contained in the Code of Criminal Procedure, 1898, be cognizable and non-bailable and thereupon the Code of Criminal Procedure, 1898 shall while such notification remain in force, be deemed to be amended accordingly. The submission is that by the Act of 1932, an amendment was made in the Code of Criminal Procedure, 1898, which stood repealed by virtue of Section 484 of Code of Criminal Procedure, 1973, which was assented by the President of April 1, 1974. The Act of 1932 having been passed simply to amend the Cr. P.C. of 1889, the argument of Sri Misra is that the former could not survive beyond the life of the Cr. P.C. of 1898, which came to an end after being repealed in April, 1974. In short, he submits that the life of the Amending Act cannot be more that the principal act and that the amending act is co-extensive and co-terminus with the Principal Act and that Cr. P.C. of 1898 which was amended by the Act of 1932, having been repealed in April, 1974, the Act of 1932 could not have survived thereafter. Sri Tulsi argues that it is a misnomer to say that the Act of 1932 is simply an Amending Act. He submits that the Act of 1932 is named as "The Criminal Law Amendment Act, 1932." because that has made some amendment in the general body of criminal law and, in fact, the Act of 1932 is not only an Amending Act but a unique blend of substantive law as well as of the provisions making an amendment in the Cr. P.C., 1898 and that it having contained substantive provisions as well, cannot be said to be co-terminus with the Cr. P.C. of 1898 in which certain amendments were made, says Sri Tulsi. From perusal of the Act of 1932, the submission of Sri Tulsi appears to be correct that the said enactment is not merely an Amending Act but that is a blend of substantive provisions as well as the ***provisions amending Cr. P.C. of 1898. So the Act of 1932*** *is still on the statute book, notwithstanding the repeal of Cr. P.C. 1898.*

62. Therefore, the contention of Sri Misra that impugned notification of August 2, 1989, having been issued under a dead enactment is invalid, has to be rejected.

Then Sri Trivedi whose assistance was sought by Sri R. R. Dwivedi submits that Section 10 of the Act of 1932 is violative of ***Article 14 of the Constitution****, inasmuch as it is bereft of any guideline in respect of an area to be specified in the notification. He submits that the State Government is given free hand with unguided, unchannelised and arbitrary power to issue notification for any area and, therefore, Section 10 suffers from the vice of excessive delegation. Section 10 of the Act of 1932 is reproduced as under :*

> *"10 Power of Local Government to make certain offences cognizable and non-bailable.-(I) The Local Government may, by notification in the local official Gazette, declare that any offence punishable under* ***Section 186, 188, 189, 190, 228, 295A, 298, 505, 506 or 507 of the Indian Penal Code,*** *when committed in any area specified in the notification shall, notwithstanding anything contained in the Code Criminal Procedure, 1898, be cognizable and thereupon the Code of Criminal Procedure, 1898, shall, while such notification remains in force, be deemed to be amended accordingly.*
>
> *(2) The Local Government may, in like manner and subject to the like conditions and with the like effect, declare that an offence punishable under* ***Section 188 or Section 506 of the Indian Penal Code*** *shall be non-bailable."*

12. The Full Bench proceeded to hold that "Section 10 of the Act of 1932 and Notification No. 777/VIII-9-4 (2) (87) dated July 31, 1989 are valid.

13. The aforesaid Full Bench decision in Meta Sewak Upadhyay (Supra) has been approved by the Hon'ble Supreme Court in Aires Rodrigues versus Vishwajeet P. Rane (2017) 11 SCC 62.

14. The validity of the aforesaid notification dated 31st July 1989 having been upheld by a Full Bench of this Court in Meta Sewak Upadhyay (Supra) and the Full Bench decision having been approved by the Hon'ble Supreme Court in Aires Rodrigues (Supra), there is no doubt that an offence under Section 506 IPC, if committed in the State of U.P. is a cognizable offence.

15. Therefore, the contention of the learned counsel for the applicant/accused has been charged with commission of non-cognizable offences only based on the decision in Dr. Rakesh Kumar Sharma (Supra), is misconceived as in that case, the accused had been charged only with offence under Section 504 IPC, which is a non-cognizable offence whereas in the instant case, the applicant has been charged with the offences under Sections 504 and 506 IPC, one of which, i.e. the offence under Section 506 is a cognizable offence.

16. It is expressly provided in Sub-Section 4 of Section 155 Code of Criminal Procedure that

> *"Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable."*

17. In view of the aforesaid provisions of law, since the accused had been charged under Sections 504 and 506 IPC, he has to be tried for both the offences in the manner prescribed for trial of cognizable offences.

18. Therefore, the application lacks merit and it is accordingly rejected.

Order Date :.24.12.2021
Ashish Pd.