

Court No. - 86

Case :- APPLICATION U/S 482 No. - 19811 of 2021

Applicant :- Avinash Kumar Modi

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

Counsel for Applicant :- Atharva Dixit, Aushim Luthra

Counsel for Opposite Party :- G.A.

Hon'ble Gautam Chowdhary, J.

The instant application under Section 482 Cr.P.C. has been filed for quashing the proceedings of Case No. 5532 of 2021 (State Vs. Avinash Kumar Modi) arising out of Case Crime No. 716 of 2004 under Sections 409, 420, 467, 468, 471, 120-I.P.C. Police Station Kotwali Fatehgarh, District Farrukhabad pending before learned Chief Judicial Magistrate, Farrukhabad as well as to quash the charge sheet dated 15.11.2019 and also to quash the summoning order dated 10.09.2021 passed in the aforesaid case.

The brief facts of the case are that pursuant to the letters of Government of U.P. dated 23.08.2000 as well as 14.08.2000, with regard to scam of Rs. 1200/- crores in the subsidy to the manufacturers of fertilizers, without supply of fertilizers by the manufacturers to the distributors, had been obtained from the Government thus wrongful loss had been caused to the State Exchequer and in compliance orders passed by Additional Chief Secretary, Agricultural Commissioner, the investigation was carried on by the then S.I. Sri Kalyan Singh of Special Investigation Branch (Agriculture), Lucknow, in which, it was revealed that during the financial years 1998-99 and 1999-2000, the sale and purchase of 3,396.025 mt. tonnes of rock phosphate and 6080.329 mt. tonnes of single super phosphate claimed by M/s Madan Madhav Fertilizers and Chemicals Pvt. Limited, Fatehgarh, was found false and thus embezzlement of Rs.

48,18,243.04 had been calculated and the subsidy claimed from the Government on false and frivolous transactions. In the aforesaid scam, M/s Ujjwal Trading Company, was also found to be involved, of which the applicant is stated to be proprietor. Thus, a first information report was lodged by Sri Satendra Kumara Mishra, Sub-Inspector Economic Offences, Wing on 10.09.2004 against 20 accused persons being Case Crime No. 716 of 2004 under Sections 467, 468, 471, 409, 420, 477A I.P.C. and 120-B I.P.C. and Section 13 (2) Prevention of Corruption Act, 1988 409, 420, 467, 468, 471, 120-B I.P.C. Police Station Kotwali Fatehgarh, District Farrukhabad wherein the applicant has been placed at serial no.9 and M/s Ujjawala Trading Company has been placed at serial no.10. After registration of the F.I.R. the matter was entrusted for investigation, which culminated in submission of charge sheet dated 15.11.2019 against the applicant and one Chandra Bhan Verma under Sections 409, 420, 467, 468, 471, 120-B I.P.C. Thereafter, the case was registered as Case No. 5532 of 2021 (State Vs. Avinash Kumar Modi) upon which the accused-applicant has been summoned vide order dated 10.09.2021.

Learned counsel for the applicant submits that the applicant is alleged to be the proprietor of M/s Ujjwal Trading Company, Jhansi which company is alleged to have supplied the rock phosphate and single super phosphate to M/s Madan Madhav Fertilizers and Chemical Ltd. Fatehgarh and thereafter subsidy has been claimed from the Government. He further submits that in fact, the proprietor of M/s Ujjwal Trading Company is Ashutosh Kumar Modi, who is the brother of the applicant but the said company was closed in the year 1994-95 due to non-supply of rock phosphate and in this regard, the brother of the applicant has given a letter to the Investigating Officer, as is evident from the extract of parcha dated 10.03.2010. He further

submits that Sri U.N.Modi, the uncle of the applicant was the Chartered Accountant of M/s Ujjwal Trading Company and it appears that after shutting down of the said company, Sri U.N.Modi kept the firm alive on papers and transactions were done by him on behalf of M/s Ujjwal Trading Company without the knowledge of applicant and the proprietor, which resulted into prosecution of the company in the instant case. Learned counsel for the applicant has next argued that by the stretch of no imagination, the applicant could be prosecuted since he has no concerned with the said company and was not involved in any of the business transaction performed by the said company. Learned counsel has also argued that M/s Madan Madhav Fertilizers and Chemical Ltd., which claimed subsidy has already been exonerated in the year 2012 in view of the fact that the subsidy has been granted in accordance with rules, copy of which letter is annexed as Annexure-9 to the affidavit accompanying the application. It is lastly argued that M/s Madan Madhav Fertilizers and Chemical Ltd. has been exonerated and that the applicant, who is neither proprietor nor had any participation in the company can be prosecuted under the charged Sections and the applicant has been made scape goat, therefore the entire prosecution against the applicant being malicious is liable to be quashed by this Court.

Per contra, learned A.G.A., has opposed the application and argued that allegations made in the F.I.R. makes out a prima facie case against the applicant and that the applicant was involved in alleged act of causing huge loss to the State Exchequer, hence the impugned proceedings are not liable to be interfered with by this Court.

Heard Sri Manish Tiwary, learned Senior Counsel assisted by Atharva Dixit, learned counsel for the applicant, Sri Rajeshwar Singh, learned A.G.A. for the State and perused the material on

record.

Perusal of the record shows that the matter pertains to the scam of Rs. 1200 crores, committed in the year 1998-99, 1999-2000, with regard to the same, the F.I.R. was lodged on 10.09.2004 against 20 accused persons. First charge sheet was submitted after a lapse of more than 13 years on 15.11.2019 against the applicant and one Chandra Bhan Verma, wherein it has been stated that investigation against one Mritunjay Kumar is going on. As has been orally stated by learned A.G.A., that another charge sheet dated 12.04.2021 has been filed against three accused persons namely, Suresh Kumar Jain, Bhupendra Kumar Jain and Sharad Khera and in the said charge sheet too, the investigation against Mritunjay Kumar is stated to be pending consideration. Parcha No.2 dated 06.10.2004, which demonstrates the statement of Satendra Kumar Mishra, Sub-Inspector-Economic-Wing, who had conducted the investigation reveals that Sri G.C.Katiyar, the then District Agriculture Officer, Farrukhabad, Sri Ratan Kumar Singh Chauhan, the then Agriculture Director, Government of U.P., Sri Ishwaku Singh Agriculture Director, Government of U.P. Sri Veerpal Singh the then Joint Agriculture Director (Supply) Sri Rang Bahadur Singh, the then Junior Agriculture Director (General), Sri Ganga Ram Additional Agriculture Director (General) Sri Aditya Narayan Sinha, the then Joint Agriculture Director (Supply) and Sri Abhar Kumar Singh, Treasury Officer (Supply), Agriculture Directorate, Lucknow are responsible in providing wrong benefits to the said companies thus their act comes within the purview of Sections 467, 468, 471, 120-B I.P.C. and Section 13 (2) of Prevention of Corruption Act but there is not even a whisper against them and they were neither interrogated nor any charge sheet has been filed against them. This Court also takes a serious note that F.I.R. was lodged

against as many as 20 accused persons but charge sheet dated 15.11.2019 (under challenge) has been filed against two accused persons and another charge sheet dated 12.04.2021 has been filed against three accused persons and the remaining 15 Dolphins accused persons have been exonerated by the Investigating Agency. Since the scam is of 1200 crores, whereas the allegation of mis-appropriation of Rs. 48,18,234.04/- has been levelled against the applicant but there is nothing on record to show, as to how and under what circumstances, M/s Madan Madhav Fertilizers and Chemical Ltd. has been given clean chit (Annexure-9 to the affidavit accompanying the application) and what has happened with regard to remaining Rs. 1152 crores and thus it appears that the same has been mis-appropriated. The investigation appears to be defective and to unveil the Dolphins accused, who are untrapped and keeping in mind the mis-appropriation of huge amount of public money, the Court is of the opinion, that the matter requires comprehensive further investigation.

Accordingly, it is directed that matter be further investigated by Central Bureau of Investigation (C.B.I.) against the named accused persons in the F.I.R., as well as charge sheeted under scrutiny of this Court and a progress report with regard to the same shall be placed before this Court on the next date of listing.

Notice on behalf of opposite party nos. 1 and 2 has been accepted by learned A.G.A.

Put up this case for further hearing on 21.03.2022 at 2 P.M.

Sri Manish Tiwary, learned Senior Counsel has stated that the interim order granted earlier may be extended. He further undertakes that the applicant will co-operate in the further investigation and shall not leave the country without prior

permission of the Court.

In view of statement of Sri Manish Tiwary, learned Senior Counsel, the interim order dated 11.02.2022 shall continue to operate, till the next date of listing subject to condition that the applicant shall co-operate and participate in the investigation and shall not leave the country without prior permission of the Court.

Let a copy of this order be supplied to Registrar General/Registrar (compliance) of this Court for necessary and effective compliance.

Order Date :- 16.2.2022

S.Ali