

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA

03RD FEBRUARY, 2022

CRIMINAL MISCELLANEOUS APPLICATION NO.96 of 2022

Between:

Dr. Mirtunjay Kumar ...Applicant

and

State of Uttarakhand and Another ...Respondents

Counsel for the Applicant : Mr. Karan Anand.

Counsel for the Respondent/ : Mr. P.S. Uniyal,
State learned Brief Holder for
the State.

Hon'ble Alok Kumar Verma,J.

The applicant-accused Dr. Mirtunjay Kumar invoked the inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code"), to quash the charge-sheet dated 28.02.2019, summoning order dated 02.03.2019, and the entire proceedings of the Special Sessions Trial No.01 of 2019, "State vs. Mirtunjay Kumar Mishra" pending before the learned Special Judge, (Vigilance), Dehradun, arising out of the Case Crime No.09 of 2018, under Sections 120B, 420, 467, 468, 471 of the IPC and Section 13(1)(a) (c) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (in short, "the Act", 1988).

2. Facts, to the limited extent necessary, are that the applicant was holding the post of Registrar of the Uttarakhand Ayurvedic University, Dehradun (in short, "the university"). The then Vice-Chancellor of the university, by his letter dated 14.06.2018, addressed to the Chief Minister, along with preliminary enquiry report, recommended for conducting enquiry against the present applicant in relation to allegations of financial irregularities, committed by the applicant during his tenure to the post of Registrar of the university for the period between 2013 to 2017. On 16.11.2018, the Additional Chief Secretary of the State Government recommended for registration of FIR and investigation of the matter. Mr. Prakash Singh, Inspector Vigilance, conducted open vigilance enquiry. After enquiry, he lodged the First Information Report on 17.11.2018 against the applicant and co-accused persons. After completion of the investigation, charge-sheet is filed.

3. During the investigation, evidence are produced to the effect that during his tenure, the applicant appointed his real brother's wife illegally. He had received reimbursement by showing falsely rail and air travel. He had illegally bought computers and electronic items for the university from M/s Amazon Automotion (Dehradun) and M/s Creative World Soluting (Dehradun). The owners of these firms are close to the applicant. The place where these firms were shown to be working was the private residence of the applicant. The bank accounts of these firms were opened fraudulently. The bank accounts of these firms were operated by the applicant and money from these bank accounts was received by the applicant.

4. Subsequent to the submission of the charge-sheet, the learned Special Judge (Vigilance), Dehradun took cognizance and passed the impugned summoning order dated 02.03.2019 against the applicant under Sections 120-B, 467, 468, 471, 420 IPC and Section 13 (1) (a) (c) (d) read with Section 13 (2) of the Act, 1988.

5. Heard Mr. Karan Anand, the learned counsel for the applicant and Mr. P. S. Uniyal, the learned Brief Holder for the State through video conferencing.

6. Mr. Karan Anand, the learned counsel for the applicant submitted that the applicant was holding the post of Registrar of the University at the relevant time and was in no manner entrusted with the job of procuring/purchasing the various articles/instruments, required by the University which were supplied by the various vendors/suppliers of the University prior to the posting of the applicant. There were prescribed procedures for purchasing any article under the prescribed Rules i.e. Uttarakhand Procurement Rules, 2008. According to the Rules, a Purchase Committee was constituted and approved by the Vice-Chancellor of the University. Awarding of contract was between Vice-Chancellor and Vendors. Professor S.P. Mishra, Vice-Chancellor, who was Chief Executive Officer of the University, awarded all the contract to the vendors and orders were issued as per his approval/direction and he was responsible for all works in University as per provisions of the Uttarakhand Ayurved University Act, 2009.

7. The learned counsel for the applicant further submitted that the matter of bill payment of contract was between Finance Controller and Vendors. The Finance Controller, who was Drawing Disbursing Officer of the University, had issued payment to all bills of the contract to the vendors with approval/direction of the Vice-Chancellor. Therefore, he was responsible for all financial works of University. The applicant had not violated any rules. No legal recommendation was taken in view of Section 17A of the Act, 1988 before lodging the FIR. Therefore, the FIR, charge-sheet and cognizance order are bad in the eye of law.

8. Mr. P. S. Uniyal, the learned Brief Holder for the State opposed the submissions of the learned counsel for the applicant.

9. Section 482 of the Code envisages three circumstances in which the inherent jurisdiction may be exercised, namely, "to give effect to an order under the Code, or, to prevent abuse of the process of any Court, or, to secure the ends of justice." Section 482 of the Code reads as follows: "Saving of inherent powers of High Court:- nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

10. This inherent jurisdiction though wide should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice. While exercising jurisdiction

under this section, the Court does not function as a Court of Appeal or Revision. Therefore, quashing of charge-sheet or setting aside the cognizance order on the appreciation of evidence is not justified.

11. The scope of Section 482 of the Code has been considered by the Hon'ble Supreme Court in various judgments.

12. In **Madhu Limaya Vs. State of Maharashtra, 1978 AIR 47**, the Hon'ble Apex Court has held that the following principles would govern the exercise of inherent jurisdiction of the High Court – (1) Power is not to be resorted to, if there is specific provision in Code for redress of grievances of aggrieved party. (2) It should be exercised sparingly to prevent abuse of process of any Court or otherwise to secure ends of justice. (3) It should not be exercised against the express bar of the law engrafted in any other provision of the Code.

13. In **Pepsi Food Limited vs. Special Judicial Magistrate and Others, 1998 (36) ACC 20**, the Hon'ble Supreme Court has observed that under Section 482 of the Code have no limits, but more the power more due care and caution is to be exercised in invoking these powers.

14. In **Lee Kun Hee and Others vs. State of U.P. and Others, JT 2012 (2) SC 237**, the Hon'ble Supreme Court held that the Court in exercise of its jurisdiction under Section 482 of the Code cannot go into the truth or otherwise of the allegations and appreciate evidence, if any, available on record.

15. In **Shakson Belthissor vs. State of Kerala and another, (2009) 14 SCC 466**, the Hon'ble Supreme Court observed,

"The scope and power of quashing a first information report and charge-sheet under Section 482 of the CrPC is well settled. The said power is exercised by the court to prevent abuse of the process of law and court but such a power could be exercised only when the complaint filed by the complainant or the charge-sheet filed by the police did not disclose any offence or when the said complaint is found to be frivolous, vexatious or oppressive. A number of decisions have been rendered by this Court on the aforesaid issue wherein the law relating to quashing of a complaint has been succinctly laid down."

16. In **State of Haryana v. Bhajan Lal (1992) Supp.(1) SCC 335**, the Hon'ble Supreme Court held,

"(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 concerned Act (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 concerned Act, 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.

17. In '**M/s. Neeharika Infrastructure Private Ltd. Vs. State of Maharashtra and Others**', **2021 SCC OnLine SC 315**, the Hon'ble Supreme Court has held as under: -

"10. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of *Khawaja Nazir Ahmad (supra)*, the following principles of law emerge:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure

contained in Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the abuse of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where noninterference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing

and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR."

"23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/ complaint/ FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;
- ii) Courts would not thwart any investigation into the cognizable offences;
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;
- vi) Criminal proceedings ought not to be scuttled at the initial stage;
- vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;
- ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where noninterference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in

the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the

investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

18. In **Kaptan Singh vs. State of Uttar Pradesh and others, 2021 SCC OnLine SC 580**, the Hon'ble Supreme Court observed that in the case of **Dhruvaram Murlidhar Sonar vs. State of Maharashtra, (2019) 18 SCC 191** after considering the decisions of **Bhajan Lal** (Supra), it is held that exercise of powers under Section

482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 Cr.P.C. though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 Cr.P.C. Similar view has been expressed in the case of **C.B.I. vs. Arvind Khanna, (2019) 10 SCC 686, Telangana vs. Managipet, (2019) 19 SCC 87** and in the case of **XYZ vs. State of Gujarat, (2019) 10 SCC 337.**

19. In **Niranjan Hem Chandra Sashittal Vs. State of Maharashtra, (2013)4 SCC 642**, the Hon'ble Apex Court observed that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. The Hon'ble Apex Court further observed that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered; and the only redeeming fact is that collective sensibility respects such suffering as it is in consonance with constitutional morality. The emphasis was on intolerance to any kind of corruption bereft of its degree.

20. In **Subramanian Swamy Vs. C.B.I., (2014)8 SCC 682**, the Constitution Bench of the Hon'ble Supreme

Court observed that corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the 1988 Act.

21. In the present case, the learned Special Judge took the cognizance after considering the evidence available on the record. The said allegations are required to be tested only at the time of trial. This Court cannot hold a parallel trial in an application under Section 482 of the Code. It is well settled that at the time of considering of the case for cognizance and summoning, merits of the case cannot be tested and it is wholly impermissible for this Court to enter into the factual arena to adjudge the correctness of the allegations. This Court would not also examine the genuineness of the allegations since this Court does not function as a Court of Appeal or Revision, while exercising its jurisdiction under Section 482 of the Code. In this matter it cannot be said that there are no allegations against the applicant. Apart this, learned counsel for the applicant could not able to show at this stage that allegations 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 applicant.

22. Therefore, in the light of the facts and circumstances of the present case, the present case does not fall in any category set out by the Hon'ble Supreme Court. Accordingly, the prayers for quashing the charge-sheet and setting aside the cognizance order along with entire proceedings are refused.

23. Since, the case has to be tried, I make it clear that the observations made earlier are only for the disposal of this application, filed under Section 482 of the Code. These observations will not influence the trial court while deciding the case.

24. With the aforesaid directions, the application, filed under Section 482 of the Code, is dismissed.

ALOK KUMAR VERMA, J.
(Vacation Judge)

Dated: 03rd February, 2022
JKJ/Pant