

Court No. - 27

Case :- APPLICATION U/S 482 No. - 10364 of 2023

Applicant :- Mohit Kumar And Another

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko And 3 Others

Counsel for Applicant :- Anil Kumar Awasthi

Counsel for Opposite Party :- G.A.,Ankit Tripathi,Bhupendra Singh Bisht

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Anil Kumar Awasthi, the learned counsel for the applicants, Sri Anurag Verma, the learned A.G.A.-I appearing on behalf of the State and Sri Ankit Tripathi, the learned counsel for the informant/opposite party no.2.
2. In compliance of the order dated 20.12.2023 Sri Udai Raj Singh, Circle Officer, Biswan, District Sitapur/Investigating Officer of the case is present in person. He has filed a supplementary counter affidavit annexing therewith copy of the relevant extracts of general diary. The State had already filed a counter affidavit and the applicant has filed a rejoinder affidavit in response to the same.
3. By means of the instant application under Section 482 Cr.P.C. the applicants have challenged the order dated 21.09.2023, passed by the learned Special Judge (POCSO Act)/Additional Sessions Judge, Court no.14, Sitapur in Case Crime No.215 of 2023: State Vs. Abhijeet Mishra @ Chotakke, under Sections 302, 120-B I.P.C. and Section 3 (2) 5 SC/ST Act, Police Station Mishrikh, District Sitapur, whereby the learned trial court has taken cognizance of offences under Section 302, 376 I.P.C. and Section 3 (2) (v) of SC/ST Act and Section 3/4 POCSO Act by co-accused Abhijit Mishra and commission of offences under Sections 302 & 120-B I.P.C. and Section 3 (2) 5 SC/ST Act by the co-accused Ashok Mishra and cognizance of

Sections 302 & 120-B I.P.C. and Section 3 (2) 5 SC/ST Act has been taken against the applicants also although their names were not included in the charge sheet.

4. Briefly stated the facts of the case are that the opposite party no.2 had lodged an F.I.R. dated 26.05.2023 against four persons including the applicant no.1 and not including the applicant no.2 stating that her daughter had gone along with another girl to a fields to attend the call of nature and while she was returning, the accused persons killed her by hanging her from a tree. After investigation a charge-sheet was submitted on 25.07.2023 against the co-accused Ashok Mishra and Abhijit Mishra only and it was mentioned in it that the investigation was still continuing. Thereafter, another charge sheet was submitted on 17.09.2023 against those co-accused persons only and it was stated in the second charge sheet that the implication of the other co-accused persons could not be established during investigation.
5. By means of the impugned order dated 21.09.2023, the learned trial court has taken cognizance the of offences committed by the two co-accused persons against whom a charge sheet has been submitted and at the same time the cognizance of the offences under Sections 302 & 120-B I.P.C. & Section 3 (2) 5 SC/ST Act committed by the applicants has also been taken.
6. The learned trial court has mentioned in the impugned order that the other girl who was accompanying the deceased at the time of the incident had implicated the applicants in her statement recorded by the Investigating Officer under 161 Cr.P.C., as also in her statement recorded by the Magistrate under Section 164 Cr.P.C. and the Investigating Officer has ignored the aforesaid material evidence.
7. The learned trial court has placed reliance on a judgment of Hon'ble the Supreme Court in the case of **Nahar Singh Vs. State of U.P.**, (2022) 5 SCC 295, wherein the Hon'ble Supreme Court has held that the trial court may summon any person, even if he is not named in the

police report, in case it appears that on the basis of material available on record, the involvement of that person in commission of offence is prima facie established.

8. In **Dharam Pal v. State of Haryana**, (2014) 3 SCC 306, a Constitution Bench of the Hon'ble Supreme Court held that

“34. The view expressed in Kishun Singh versus State of Bihar, (1993)2 SCC 16, in our view, is more acceptable since, as has been held by this Court in the cases referred to hereinbefore, the Magistrate has ample powers to disagree with the final report that may be filed by the police authorities under Section 173(2) of the Code and to proceed against the accused persons de hors the police report, which power the Sessions Court does not have till the Section 319 stage is reached. The upshot of the said situation would be that even though the Magistrate had powers to disagree with the police report filed under Section 173(2) of the Code, he was helpless in taking recourse to such a course of action while the Sessions Judge was also unable to proceed against any person, other than the accused sent up for trial, till such time evidence had been adduced and the witnesses had been cross-examined on behalf of the accused.

35. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(2) CrPC. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.”

9. The Constitution Bench Judgment in the case of Dharam Pal (Supra) has been followed in **Nahar Singh v. State of U.P.**, (2022) 5 SCC 295 : 2022 SCC OnLine SC 332, wherein the Hon'ble Supreme Court held that: -

“29. In Raghubans Dubey v. State of Bihar, AIR 1967 SC 1167, SWIL Ltd. v. State of Delhi, (2001) 6 SCC 670 and Dharam Pal v. State of Haryana, (2014) 3 SCC 306, the power or jurisdiction of the court or Magistrate taking cognizance of an offence on the

basis of a police report to summon an accused not named in the police report, before commitment has been analysed. The uniform view on this point, irrespective of the fact as to whether cognizance is taken by the Magistrate under Section 190 of the Code or jurisdiction exercised by the Court of Session under Section 193 thereof is that the aforesaid judicial authorities would not have to wait till the case reaches the stage when jurisdiction under Section 319 of the Code is capable of being exercised for summoning a person as accused but not named as such in police report. We have already expressed our opinion that such jurisdiction to issue summons can be exercised even in respect of a person whose name may not feature at all in the police report, whether as accused or in Column (2) thereof if the Magistrate is satisfied that there are materials on record which would reveal prima facie his involvement in the offence. None of the authorities limit or restrict the power or jurisdiction of the Magistrate or Court of Session in summoning an accused upon taking cognizance, whose name may not feature in the FIR or police report.”

10. The Hon’ble Supreme Court further held that: -

“30... For summoning persons upon taking cognizance of an offence, the Magistrate has to examine the materials available before him for coming to the conclusion that apart from those sent up by the police some other persons are involved in the offence. These materials need not remain confined to the police report, charge-sheet or the FIR. A statement made under Section 164 of the Code could also be considered for such purpose.”

11. Therefore, I am of the considered view that the learned Magistrate has not committed any illegality in summoning the applicants to face the trial on the basis of the statements of a witness recorded under Section 161 and 164 Cr.P.C.

12. The learned counsel for the applicant has submitted that the entire family of the applicant has been falsely implicated in the present case due to animosity between the parties.

13. In **C.B.I. v. Aryan Singh**, 2023 SCC Online SC 379, the Hon’ble Supreme Court has held that while exercising the powers under Section 482 Cr.P.C., the Court is not required to conduct a mini trial. It does not require the prosecution/investigating agency to prove the allegations. While exercising the powers under Section 482 of the

CrPC the Court has very limited jurisdiction and is required to consider “whether any sufficient material available to proceed further against the accused for which the accused is required to be tried or not”.

14. In **Manik B Vs. Kadapala Sreyes Reddy and others**, SLP (Crl.) No. 2924 of 2023 decided on 07.08.2023, the Hon’ble Supreme Court has held that: -

“6. Whether the testimony of the witnesses is trustworthy or not has to be found out from the examination-in-chief and the cross-examination of the witnesses when they stand in the box at the stage of such trial.

7. Such an exercise, in our considered view, is not permissible while exercising the jurisdiction under Section 482 Cr.P.C.

8. The scope of interference, while quashing the proceedings under Section 482 Cr.P.C. and that too for a serious offence like Section 302 of Indian Penal Code is very limited. The Court would exercise its power to quash the proceedings only if it finds that taking the case at its face value, no case is made out at all.”

15. Therefore, while deciding the application under Section 482 Cr.P.C., this Court cannot examine the contention of the learned Counsel for the applicant that the entire family of the applicant has been implicated falsely and that will be decided by the trial Court after the parties have availed the opportunity to lead their respective evidence.
16. In view of the aforesaid facts and circumstances of the case, I find no merit in the application and the same is accordingly **dismissed**.
17. It is made clear that the learned trial court shall proceed to decide the case expeditiously in accordance with law without being influenced by any observations made in this order.

(Subhash Vidyarthi, J.)

Order Date : 16.01.2024

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