

Court No. - 84

Case :- APPLICATION U/S 482 No. - 21056 of 2023

Applicant :- Rajesh Kumar

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

Counsel for Applicant :- Juned Alam, Mohd Hamid

Counsel for Opposite Party :- G.A.

Hon'ble Prashant Kumar, J.

1. Heard Sri Juned Alam, learned counsel for the applicant and Sri A.K. Sand, learned A.G.A. for the State.
2. The instant application under Section 482 Cr.P.C. has been filed challenging the charge sheet dated 06.12.2019 and summoning order dated 01.07.2022 as well as entire proceeding of Criminal Case No.511 of 2022 (State Vs. Rajesh Kumar and another), arising out of Case Crime No.331 of 2019, under Sections 505(2)/295 (A) I.P.C. and 67 I.T. Act, Police Station Milak, District Rampur pending in the Court of Civil Judge (J.D.) F.T.C., Rampur.
3. In this matter, a first information report was registered against the applicant on the ground that he had been instrumental in disturbing communal harmony. The allegation made in the F.I.R. is shocking. The applicant had posted a very objectionable and disrespectful picture of Lord Hanuman, with a very objectionable tag line. After the investigation, chargesheet has been filed. The Court has taken cognizance after perusing the material available on record and came to a conclusion that prima facie case has been made out against the accused-applicant.
4. The Hon'ble Supreme Court in the matter of **State of Haryana and others vs. Bhajan Lal & others** reported in **1992 Supp.(1) SCC 335** has laid down guidelines as to how the inherent power bestowed in the High Court should be exercised under Section 482 Cr.P.C. The Court further held that the power should be exercised either to prevent abuse of the process of any Court or otherwise to secure ends of justice. The Hon'ble Supreme Court further held that 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. Which are as follows:-

(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 F.I.R. 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.

5. The Hon'ble Supreme Court in the matter of **Amanullah & Anr vs State of Bihar & Ors** reported in **(2016) 6 SCC 699** has held that once a magistrate after perusing the evidence on record comes to the conclusion that *prima facie* case is made out and take cognizance then the High Court should not use the inherent power granted under Section 482 Cr.P.C, unless the order is *ex facie* illegal.

6. The Hon'ble Supreme Court in the matter of **Kaptan Singh Vs. State of Uttar Pradesh and others** reported in **(2021) 9 SCC 35** has held that if an application under Section 482 Cr.P.C. is filed against the charge sheet, which is after conclusion of the investigation then the matter stands on different footing. At that stage, the High Court

cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on and if there is a disputed question of fact the same has to be looked into by the Court below and the High Court should not look into while dealing with the application under Section 482 Cr.P.C.

7. It is well settled that at the stage of taking cognizance, the Court should not get in the merits of the case, at such stage, the Court's power is limited to the extent on finding out whether from the material placed before it, the offences alleged thereunder against the accused is made out or not with a view to proceed further with the case.

8. The instant matter does not fall under the guidelines laid down by the Hon'ble Supreme Court. The limit of exercising jurisdiction conferred on the High Court under Section 482 Cr.P.C. is well defined, by no stretch of imagination, it could be said that the instant application filed under Section 482 Cr.P.C. fulfills the requirement as contemplated. Hence, I see no reason to interfere and entertain the instant application filed under Section 482 Cr.P.C.

9. Accordingly, the instant application is **dismissed**.

(Prashant Kumar, J.)

Order Date :- 5.6.2023
S.P.