

Neutral Citation No. - 2024:AHC:88704

Reserved on : 07.05.2024

Delivered on : 15.05.2024

Court No. - 91

Case :- APPLICATION U/S 482 No. - 9000 of 2024

Applicant :- Alka Sethi And Another

Opposite Party :- State Of Up And 4 Others

Counsel for Applicant :- Avneesh Tripathi

Counsel for Opposite Party :- Ashok Kumar Singh Bais,G.A.,Gaurav Kakkar

Hon'ble Prashant Kumar,J.

1. Before proceeding with the case, at the very outset, upon questioning about the maintainability of the instant Application filed under Section 482 Cr.P.C., Shri Gaurav Kakkar, appearing on behalf of the opposite party no. 5 submits that he has no objection to the maintainability of the application. On his statement, the Court is proceeding with the instant application.

2. Heard Shri Avneesh Tripathi, Advocate and Shri Aishwarya Pratap Singh, Advocate appearing on behalf of the applicants, Shri Gaurav Kakkar, Advocate appearing on behalf of the opposite party no. 5 and Shri Shashi Dhar Pandey & Shri Sudhir Kumar Chandraul, learned AGA for the State-opposite parties and perused the record.

3. The instant applicant under Section 482 Cr.P.C. has been filed by applicants Alka Sethi and her husband Dhruv Sethi seeking quashing of the entire proceedings as well as the impugned summoning and cognizance order dated 24.01.2024 passed by the Court of learned Special Judge (SC/ST Act), Saharanpur in Sessions Case No. 182 of 2024 and the impugned charge-sheet No. 77 of 2023 dated 27.11.2023, arising out of Case Crime No. 78 of 2023 (State vs. Dhruv Sethi and another), under Sections 332, 341, 353, 389, 504, 506 I.P.C. and Sections 3(1)(da), 3(1)(dha), 3(2)(v) of the

Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Police Station Biharigarh, District Saharanpur.

4. As per the allegations levelled in the F.I.R., on 18.08.2023 at about 1:40 p.m. when informant-Lekhpal-opposite party no. 5 was standing outside the road of village Satpura and inspecting some Khashra numbers, at that time applicant alongwith his wife came there and started abusing him with filthy caste related language and has also stated that if he do not follow his dictates, he will get him implicated in the case of misbehaving with his wife as well as in case of corruption. Applicant had also detained the informant, later he was released on intervention of S.H.O., Biharigarh.

5. Learned counsel for the applicants submits that the genesis of the present case arose from a piece of land which was purchased by the applicants, who are husband and wife and resident of Dehradun. This land in Saharanpur was purchased by the applicant from Lokesh Mittal through registered sale deed dated 02.08.2016 executed in favour of Dhruv Sethi (applicant no. 2). Pursuant to the sale deed his name was mutated in the revenue record and thereafter, applicant being co-sharer of the land filed a suit under Section 116 of U.P. Revenue Code before S.D.M. Behat, Saharanpur in the year 2021 for division of holding, which was decreed in favour of the applicant vide order dated 09.06.2022 and 09.01.2023. Thereafter the applicants sought for a demarcation.

6. He further submits that despite the order of S.D.M., concerned officers (opposite party no. 5) were delaying the process of demarcation. He further submits that the local land mafia's having influence in that area and also over the revenue as well as the local police official hatched a conspiracy and wanted to grab the land of the applicants, for which they were regularly torturing the applicants. To get rid of this, applicants lodged a F.I.R. against the miscreants in

Case Crime No. 121 of 06.05.2022 and Case Crime No. 138 of 19.05.2022.

7. He further submits that being aggrieved with the high handedness of Revenue as well as Police officials, applicant had moved complaint on IGRS/Dashboard on 12.08.2022 and 27.01.2023 for appropriate action along with the relevant photograph and Video clips, which remained pending.

8. He further submits that as the order of S.D.M., Behat for demarcation of his land, was not being complied, so they have moved various applications for execution of order, but all were in vain. However on repeated approach S.D.M., Behat inspected the spot and fixed a date i.e. 18.08.2023 for demarcation. He further submits that on 18.08.2023 on being inquired about the demarcation, Kanoongo called him to come at police station Biharigarh and also informed the applicant that it will be done ex-parte, immediately thereafter, applicant no. 2 informed the S.D.M., Behat and told him that the Kanoongo wanted to do the demarcation of his land in his absence, on this the SDM Behat assured the applicant No.2 that he will direct the Kanoongo that two persons from each party to be present at the time of demarcation. On this, Kanoongo misguided the applicants by saying that demarcation stands postponed and now it was scheduled on Tuesday i.e. 22.08.2023, at 10 AM. Thereafter, applicants went to see their land, at about 1:40 p.m. on 18.08.2023, they found and caught revenue team red-handedly carrying out demarcation of applicant's land without their presence, but in the presence of other miscreants . The Lekhpal and Kanoongo and other three revenue staff was standing in front of the applicants' land alongwith revenue records, map and other measurement instruments. Immediately applicant started making video of their illegal activities. In all there were 7-8 persons present on the land of the applicants including the informant Lekhpal.

9. He further submits that from the video clip and photographs recorded by the applicants at the time of the alleged incident clearly shows presence of the first informant along with other officials was conducting measurement of applicants land without adopting due procedure of law. On being challenged, of their illegal activities the revenue officer and the opposite party no. 5 got agitated and started a scuffle with the applicants which was duly recorded and photographed, by the applicant.

10. The applicants immediately informed about this incident to S.D.M. and made various telephone calls. Thereafter, on the same fateful day applicants approached District Magistrate, Saharanpur and apprised him about the entire incident where upon, he orally instructed the S.H.O., to lodge the FIR against the Lekhpal and his associates. He further submits that applicants visited the Police Station, Biharigarh, for lodging the FIR against the revenue team on 18.08.2023 at about 07.30 pm but the then SHO Biharigarh, Mr. Beenu Singh refused to register the FIR against Lekhpal Vasudev and his associates on the pretext that the same requires permission from higher authorities or written order by higher authorities. After much persuasion, when the complaint was not lodged, applicants returned back to Dehradun.

11. On 19.08.2023- The applicant came to know that an F.I.R. was lodged against them, in which it was alleged that the applicants had used the caste related words against the opposite party no. 5, which was nothing but a counterblast, and to ensure no F.I.R. is lodged against the revenue officers, who were involved in the illegal activity in connivance with the local land mafiyas.

12. After lodging of the fabricated F.I.R., applicants made a complaint to the Chief Minister of UP on 25.08.2023 in "JANTA DARBAAR" which was registered on IGRS/Dashboard as reference no.-15000230173322, wherein S.D.M. Behat, submitted his report

dated 23.09.2023 in which he accepted that applicants had called him on 18.08.2023 and requested him to visit the spot of incident. The report does not mention the use of any abusive caste-based language or threats by applicants for the lekhpal. However, in the F.I.R. it is wrongly alleged that the informant was standing at the side of the road.

13. After the lodging of the F.I.R. against the applicants, they had no other option but to approach this Court. They had preferred a Criminal Misc. Writ Petition No. 14056 of 2023 before this Court. Wherein, interim protection was granted by this Court vide order dated 28.10.2023. After getting interim protection applicants have submitted their written statements, along with the Interim Order dated 28.08.2023, photographs, call records, video clips and other related documents to the Investigating Officer through registered post as well as through WhatsApp, which was duly received by the Investigating Officer. The Investigating Officer for the reasons best known to him had deliberately ignored the written submissions, photographs, video clips and did not include it in the case diary.

14. During investigation charges under sections 341, 506 I.P.C and section 3(1)(da) and 3(2)(v) of SC/ST Act were added and despite of the interim protection granted by this Court, an effort were made to arrest the applicants.

15. After investigation charge-sheet was filed on 27.11.2023. Learned trial court, thereafter had taken cognizance and issued summoning order against the applicants on 24.01.2024. Which has been assailed in the instant application, wherein charge-sheet, summoning order and the entire proceedings have been challenged.

16. It is submitted that, the applicant were not aware of the caste of the opposite party no. 5 and neither they had stated any caste related word. In the absence of the knowledge of his caste, there was no occasion for the applicant to have made a caste related comments

against the opposite party no. 5. The entire proceedings initiated by opposite party no. 5 was nothing but to ensure that the applicant do not continue bringing the fact of the corruption and connivance of the land mafia, police official and revenue officer to the higher authorities. Moreover, the entire proceedings initiated was just to ensure that the F.I.R. which the applicant was about to lodge is not lodged, and he may not pursue the various complaints filed by him.

17. The video recording and photograph of the entire incident was handed over to the Investigating Officer but the same has not been considered perhaps on the ground that evidence is an electronic record. To buttress his argument the applicant is relying on the judgement passed by the Hon'ble Apex Court in the matter of **Anvar P.V. vs. P.K. Basheer and others**, reported in (2014) 10 SSC 473, wherein, it was held that if an electronic record is used as primary evidence under section 62 of the Evidence Act, the same is admissible in evidence, without compliance of the condition in section 65B of the Evidence Act.

18. Per contra, Shri Gaurav Kakkar, Advocate appearing on behalf of the opposite party no. 5, (who is complainant in this case) submits that the applicants in the present case are basically the persons who are dealing in real estate. The prosecution story is also supported by the witnesses whose statements were recorded. He further submits that prima facie case is made out in the F.I.R. so the Court should not interfere and use the inherent power.

19. Mr. Sudhir Kumar Chandraul, learned AGA appears on behalf of the State and submits that on the fateful day at about 1:40 p.m., the informant who was posted as Lekhpal of the area was standing at the road side at some distance from village Satpura and was enquiring about some khasra numbers, at that point of time, applicant no. 2 alongwith his wife came on the spot and started abusing the informant using caste related words and when informant tried to calm

him down, applicant no. 2 with a false accusation, took him hostage and made a call to the then S.H.O., Biharigarh, then S.D.M., Behat came to the spot and released the informant. He further submits that on the basis of facts contended in F.I.R. and evidence collected during investigation, the Investigating officer has submitted charge-sheet against applicants and on the basis of charge-sheet, learned Magistrate has taken cognizance and issued summons on 24.01.2024. He further submits that prima facie an offence is said to have been made out against the applicants. There is no illegality or impropriety in the impugned cognizance order taken by the Magistrate. He further submits that the averments raised by the applicants herein can be raised in their defence during trial.

20. Looking into the background of this case, it is clear that the applicant No. 2 had purchased a piece of land and after mutation applied for demarcated. Despite the order of demarcation, the same was not been carried out by the revenue officers for the reasons best known to them. The applicant No. 2 had no other choice but to make a complaint to the Senior Officers and in spite of the direction, the concerned S.H.O. has chosen not to follow the same. When the Senior Officer District Magistrate directed to lodge the F.I.R., opposite party no. 4 in connivance with the opposite party no. 5 did not lodge the F.I.R. on 18.08.2023. But the opposite party no. 5 who came to know, that the F.I.R. was about to be lodged against him, after lapse of 48 hours, he lodged an the F.I.R. under sections 332, 353, 389, 504 I.P.C. read with section 3(1)(dha) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 against the applicants.

21. Though the entire video clipping, photographs and other documentary evidence of the incident were sent by speed post (receipt of the same has been attached with the application) and also by WhatsApp but those were not entered into the case diary and Investigating Officer, and without taking the evidence into

consideration had filed the charge-sheet in very mechanical manner. After filing of the charge-sheet the trial court took cognizance and issued summons against the applicants which is impugned herein.

22. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was promulgated to ensure that no atrocities takes place against the member of SC/ST who were in a most vulnerable condition. The Act which had been promulgated for a very specific reason, but shockingly the Provisions of this Act has been misused and abused by some people for the personal vendetta or for the personal interest, or to protect themselves from the rigours of the law.

23. In this case, it is clear that there was dispute between the parties. Opposite party No. 5 was not carrying out the demarcation for that he made the applicant run from pillar to post. When pressure was exerted upon him, he assured that the demarcation would be carried out in front of the parties. But shockingly he started demarcation behind the back of applicants, when the same was objected, a scuffle broke out, which resulted into filling of instant application. The genesis of the entire dispute shows that the F.I.R. lodged on 18.8.2023 was nothing but a counterblast to the earlier proceedings and just to ensure that the applicants do not lodge the complaint against the opposite party No. 5.

24. Further the story that the applicant had tied down the revenue officer and was released when the Senior Officers came to the spot is also quite unbelievable, as to how a man and a lady could overpower so many people and tie them up and detain them till the intervention of the Senior Officers who came on the spot.

25. Undoubtedly it is clear misuse and abuse of process of law there is not even single iota of evidence to show that the applicants are aware of the Caste of the opposite party No. 5 and in absence of knowing the same, it is hard to believe that the applicants had used

Caste related words against the opposite party No. 5. Whereas there is no evidence to show that the offence as alleged to have been committed, was committed on the ground, that the victim/opposite party No. 5 was the member of the scheduled Caste.

26. The Hon'ble Supreme Court in the matter of **Dinesh v. State of Rajasthan**, reported in **(2006) 3 SCC 771** has held :-

“15. Sine qua non for application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of Scheduled Castes and Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not case of the prosecution that the rape was committed on the victim since she was a member of Scheduled Caste. In the absence of evidence to that effect, Section 3(2)(v) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life and fine.”

27. The Hon'ble Supreme Court in the matter of **Khuman Singh vs. State of Madhya Pradesh**, reported in **2018 SCC Online MP 1512** has categorically held :-

“12. From the evidence and other materials on record, there is nothing to suggest that the offence was committed by the appellant only because the deceased belonged to a Scheduled Caste. Both the trial court and the High Court recorded the finding that the appellant-accused scolded the deceased Veer Singh that he belongs to “Khangar” Caste and how he could drive away the cattle of the person belonging to “Thakur” Caste and therefore, the appellant-accused has committed the offence under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Section 3 of the said Act deals with the punishments for offences of atrocities committed under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Section 3(2)(v) of the Act reads as under:-

*“Section 3 – Punishments for offences of atrocities –
(1)*

(2) Whoever, not being a member of a Scheduled Caste or a Schedule Tribe,-

.....

(v) commits any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine”.

The object of Section 3(2)(v) of the Act is to provide for enhanced punishment with regard to the offences under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property knowing that the victim is a member of a Scheduled Caste or a Scheduled Tribe.

14. Insofar as the conviction under Section 302 IPC is concerned, as discussed earlier, the conviction of the appellant under Section 302 IPC is modified as conviction under Section 304 Part II IPC.

28. In view of the judgments laid down by the Hon'ble Supreme Court unless and until it is proved that the applicants are aware of the Caste of the victim, there is no occasion for him to make such a comment, or even if made, it would be unintentional, and hence the same would not fall under the offence under 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

29. The Hon'ble Supreme Court in the matter of **State of Haryana Vs. Bhajan Lal 1992 Supp (1) SCC 335** has laid down the guidelines under which circumstances the Court should, in its inherent power, entertain an application under Section 482 Cr.P.C. The guidelines are as follows:-

"(i) 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.

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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.

(vi) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (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 Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(vii) Where a criminal proceeding is manifestly attended with mala fides 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."

30. The plain reading of the F.I.R. even if it is accepted, do not prima facie constitute an offence as there is nothing to show that the applicants are aware of his Caste or made a comment knowingly with the intention to disgrace him. Further as per the allegation made in the F.I.R. no prudent person can reach to just conclusion that there was ground for proceeding against the accused.

31. In view of the aforesaid facts and circumstances of the case and the ratio laid down by the Hon'ble Supreme Court in **Dinesh vs State of Rajasthan (supra)** and **Khuman Singh (supra)** the instant application is allowed and the proceedings initiated in Case Crime No. 78 of 2023 (State vs. Dhruv Sethi and another), under Sections 332, 341, 353, 389, 504, 506 I.P.C. and Sections 3(1)(da), 3(1)(dha),

3(2)(v) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, Police Station Biharigarh, District Saharanpur are hereby **quashed**.

32. This Court will be failing in its duty, if such kind of activities are allowed to take place in the State of U.P. by none other than the government servant. Here the connivance of land mafias, the Revenue Officers and the then S.H.O., seems to be playing major role, wherein a couple has wrongly been implicated in the criminal proceedings and they have been forced to run from pillar to post. The conduct and connivance of the revenue officials, police personnels and the land mafias are also to be investigated upon. The F.I.R. lodged by the applicant in Case Crime No. 121 of 06.05.2022 and Case Crime No. 138 of 19.05.2022 in Police Station-Biharigarh and also the complaints made on IGRS/Dashboard on 12.08.2022 and 27.01.2023 needs to be properly investigated. I would request the Director General of Police to get the matter investigated by the concerned Senior Superintendent of Police. The investigation may be completed preferably within 4 months from today.

33. The Registrar Compliance to forward the judgement to the concerned Authority.

34. With this direction, the instant application is **allowed**.

Order Date :- 15.05.2024

Bhanu