Neutral Citation No. - 2024:AHC:99822

Court No. - 29

Case :- APPLICATION U/S 482 No. - 11904 of 2024

Applicant :- Roshan Lal Alias Roshan Rajbhar And Others
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Babu Lal Ram,Kamlesh Kumar Rajbhar
Counsel for Opposite Party :- G.A.

Hon'ble Syed Qamar Hasan Rizvi,J.

1. Heard Sri Babu Lal Ram, learned counsel for the applicants; Sri Moti Lal, learned Additional Government Advocate appearing for the State-opposite party.

2. By means of the present Application under Section 482 Criminal Procedure Code, the Applicant has prayed for quashing of the charge-sheet dated 14.05.2022, the cognizance/summoning order dated 25.07.2022 and proceeding bearing Case No.4647 of 2023 (State versus Roshan and others) arising out of Case Crime No.81 of 2022 under Section 434 & 506 Indian Penal Code, Police Station Didarganj, District- Azamgarh pending before the Court of learned Additional Civil Judge (Judicial Division) / Judicial Magistrate, Court No.23, Azamgarh.

3. The relevant facts of the case in nutshell, which are required to be mentioned are that the opposite party No. 2 namely Smt. Vidyawati Devi lodged a First Information Report on 07.04.2022 against six persons namely Roshan (present applicant), Ratanlal, Madanlal, Hariram, Shri Chand and Janardan for the alleged offence under Section 434 and 506 Indian Penal Code, stating therein that she is the resident of Village Bangaon, Pargana Mahul, Tehsil Martinganj, District Azamgarh and is the owner of the plots No.288/0.44 and 287/0.44, Village Makdoompur. It has been further narrated in the F.I.R. that in pursuance of the demarcation made under Section 24 of U.P. Revenue Code, 2006, the proceeding of '*Patthargadi'*

was carried out. Categorical allegation against the above named six persons are that they dismantled the *'boundary marks*' fixed under the aforesaid demarcation proceeding and have illegally removed the same by force. The informant/complainant also made allegation of serious threats to her life, from the persons named in the said FIR.

4. Contention of the learned counsel for the Applicant is that the dispute between the applicant and the opposite party no.2 is purely of civil nature and cognizable by the competent court/authority prescribed under the relevant provisions of the U.P. Revenue Code, 2006. He further submits that the opposite party No. 2, without impleading them in the case filed by her under section 24 of the U.P. Revenue Code, 2006 in respect of Gata No.288 and 287 situated in Village Makdoompur, obtained an Order on 16.11.2018, at the back of the present applicants, from the Court of learned Sub Divisional Officer, Martinganj, District Azamgarh. It has been further submitted that on coming to know about said Order dated 16.11.2018, the applicants being the co-sharer in the said property moved an application for recall of the same on 05.12.2018 in the Court of learned Sub Divisional Officer, Martinganj, District Azamgarh.

5. The assertion of the learned counsel for the applicant is that the criminal proceedings initiated at the instance of the opposite party no.2 are nothing but a sheer harassment against the Applicants, just to create undue pressure on them. Learned counsel for the applicant has also raised questions on the fairness of the investigation and also to the legality of the charge-sheet dated 14.05.2022. He contends that the Investigating Officer without verifying the correctness of the allegations, the documentary evidence and the nature of dispute between the parties, submitted the charge-sheet, which is bad in law. The Hon'ble Supreme Court has very critically dealt with the aforesaid controversy in the case of ***Indian Oil Corporation*** *versus* ***NEPC India Limited*** reported in **2006 (6) SCC 736**, wherein Hon'ble the Apex Court has taken serious note of the growing tendency of converting civil

dispute into criminal cases. Further, putting a node of caution in case of ***Professor R.K. Vijayasarathy and another*** *versus* ***Sudha Seetharam and another*** reported in **2019 (16) SCC 739**, the Hon'ble Supreme Court of India has been pleased to hold that cloaking a civil dispute with a criminal nature without ingredients necessary to constitute a criminal offence is abuse of process of court, therefore the impugned criminal proceedings are liable to be quashed.

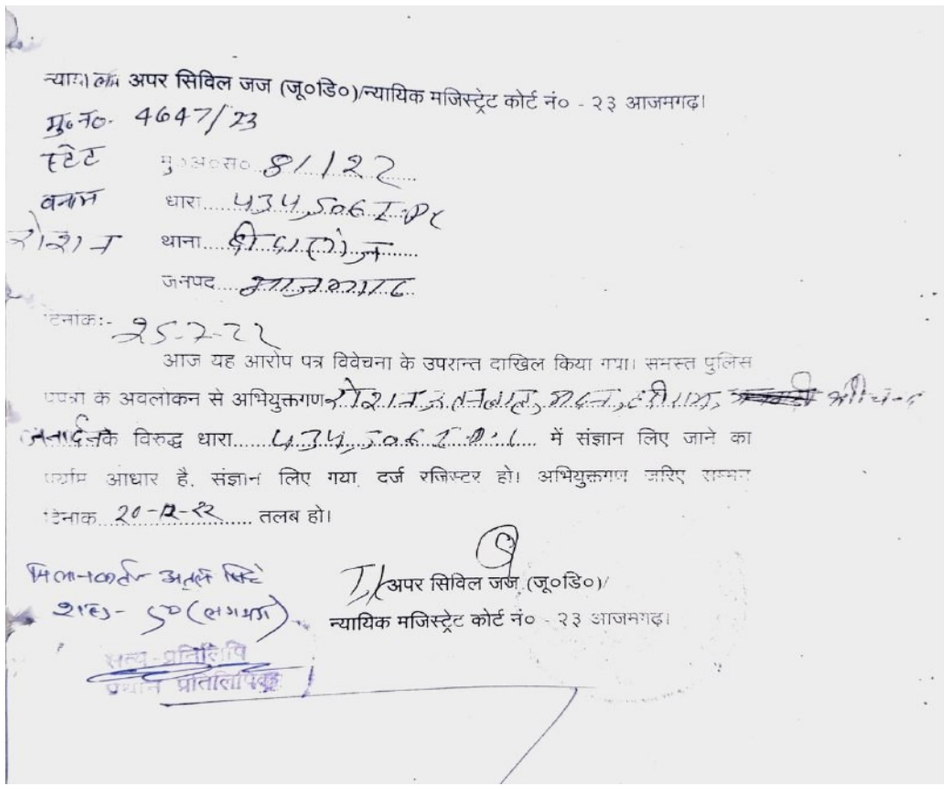
6. After arguing the case at some length, the learned counsel for the petitioner narrowed his arguments to focus the blatant illegality of the impugned cognizance/summoning order dated 25.07.2022. The genesis of his contention is that the learned Court below, in the most arbitrary and mechanical manner, by brushing aside the spirit of Section 190 of Criminal Procedure Code; passed the impugned cognizance order dated 25.07.2022 on a printed proforma. A bare perusal of the said order demonstrates that the same has been passed without application of judicial mind and lack of consideration regarding the commission of alleged offence.

7. Per contra, the learned Additional Government Advocate appearing for the State vehemently opposed the instant Application and defending the impugned cognizance order dated 25.07.2022 submits that in the instant case prima facie offence under Section 434 & 506 I.P.C is made out against the applicant as such the learned court below has taken the judicial notice of the offence and has very rightly passed the cognizance order dated 25.07.2022. Further, the facts of the present case do not meet the settled parameters for exercise of power under Section 482 of Criminal Procedure Code as laid down by the Hon’ble Supreme Court in catena of judgements. The contention of the learned Additional Government Advocate for the State-opposite party No.1 is that interference in summoning order by this Court in the proceeding under Section 482 Criminal Procedure Code can be made only when on the basis of the averments made in the First Information Report or Complaint no offence is made out. However, the learned

Additional Government Advocate could not refute the fact that the impugned summoning order dated 25.07.2022 has been issued on a printed proforma wherein the name of the accused persons and the date of the incident etc. have been filed in the blank spaces.

8. Taking into consideration the arguments advanced by the learned counsel for the Applicant and the learned Additional Government Advocate appearing for the State of U.P. and also the available records, this Court proceeds to decide the case as under.

9. For better appreciation of the issue that as to whether the impugned summoning order dated 25.07.2022 passed the learned Additional Civil Judge (Judicial Division) / Judicial Magistrate, Court No.23, Azamgarh reflects any application of judicial mind before taking cognizance of the offence in question. For ready reference the cognizance and summoning order dated 25.07.2022 as annexed with the instant Application is reproduced below:



न्यायालय अपर सिविल जज (जू०डि०)/न्यायिक मजिस्ट्रेट कोर्ट नं० - २३ आजमगढ़।

मु०नं० 4647/23

स्टेट मु०अ०सं० 81/22

बनाम धारा 434,506 I.P.C

थाना

जनपद

दिनांक:- 25-7-22

आज यह आरोप पत्र विवेचना के उपरान्त दाखिल किया गया। समस्त पुलिस पत्रावली के अवलोकन से अभियुक्तगण के विरुद्ध धारा 434,506 I.P.C में संज्ञान लिए जाने का पर्याप्त आधार है, संज्ञान लिए गया, दर्ज रजिस्टर हो। अभियुक्तगण जरिए सम्मन दिनांक 20-8-22 तलब हो।

अपर सिविल जज (जू०डि०)/
न्यायिक मजिस्ट्रेट कोर्ट नं० - २३ आजमगढ़।

10. At this stage, it would be apt to go through the provisions as contemplated under Section 190 of the Criminal Procedure Code, which reads as under**:**

> **190. Cognizance of offences by Magistrates -**
>
> (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence - **(a)** upon receiving a complaint of facts which constitute such offence; **(b)** upon a police report of such facts; **(c)** upon information received from any person other than a police officer or upon his own knowledge, that such offence has been committed.
>
> (2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

11. The Hon'ble Supreme Court in the case of ***Darshan Singh Ram Kishan*** *versus* ***State of Maharashtra*** reported in **(1971) 2 SCC 654**, in context to Section 190 of the Code of Criminal Procedure, has been pleased to hold that taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a police officer. Therefore, when a Magistrate takes cognizance of an offence upon a police report, prima facie he does so of the offence or offences disclosed in such report.

12. The Hon’ble Apex Court in the case of ***Fakhruddin Ahmad versus State of Uttaranchal and another***; reported in **(2008) 17 SCC 157**, by considering the ambit and scope of the phrase “Taking Cognizance” has been pleased to hold that the said phrase being an expression of indefinite

import, it is neither practicable nor desirable to precisely define as to what is meant by "Taking Cognizance". Whether the Magistrate has or has not taken cognizance of the offence will depend upon the circumstances of the particular case, including the mode in which the case is sought to be instituted and the nature of the preliminary action. It is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and *applied his mind* to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate *applies his mind* and is satisfied that the allegations if proved would constitute an offence and decides to initiate proceedings against the alleged offender that it can be positively stated that he has taken cognizance of the offence. Cognizance is in regard to the offence and not the offender.

13. While elaborating the meaning of term **'**cognizance**'** the Hon'ble Supreme Court has been pleased to observe that whenever it is said that the Magistrate has taken cognizance of any offence under Section 190 of the Code of Criminal Procedure, it is implied that it must not only have applied it's mind to the contents of the charge-sheet or complaint. However, when the Magistrate applies its mind for passing some order of different nature i.e., ordering investigation under Section 156(3) of the Criminal Procedure Code, or issuing a search warrant for the purpose of the investigation etc., it cannot be said to have taken cognizance of the offence.

14. In the case of ***Sunil Bharti Mittal*** *versus* ***Central Bureau of Investigation*****,** reported in 2005 (4) SCC 609: **2015 SCC Online SC 18**, Hon'ble the Apex Court has been pleased to hold as under:

> *"**48.** Sine qua non for takin cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is*

bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he shall be said to have taken cognizance. As the stage of taking cognizance, the only consideration before the court remains to consider judiciously whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not.

49. *Cognizance of an offence and prosecution of an offender are two different things. Section 190 of the Code empowered taking cognizance of an offence and not to deal with offenders. Therefore, cognizance can be taken even if offender is not known or named when the complaint is filed or FIR registered. Their names may transpire during investigation or afterwards.*

……

……

52. *A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused because he thinks that it is unlikely to result a conviction.*

53. *However, the words "sufficient grounds for proceeding" appearing in the Section are of immense importance. It is these words which amply suggest that an Opinion is to be formed only suggest that an after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is a prima facie case against the accused, though the order need not contain detailed reasons . A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."*

Thus, it is essential that due application of mind should be reflected from the order taking cognizance.

15. This Court in the case of ***Ankit*** *versus* ***State of U.P.*****,** reported in **2009 (9) ADJ 778**; has held as under: -

"10. Below aforesaid sentence, the seal of the Court containing name of Sri Talevar Singh, the then Judicial Magistrate-III, has been affixed and the learned Magistrate has put his short signature (initial) over his name. The manner in which the impugned order has been prepared shows that the learned Magistrate did not at all apply his judicial mind at the time of passing this order and after the blanks were filled up by some employee of the Court, he has put his initial on the seal of the Court. This method of passing judicial order is wholly illegal. If for the shake of argument, it is

assumed that the blanks on the printed proforma were filled up in the handwriting of learned Magistrate, even then the impugned order would be illegal and invalid, because order of taking cognizance or any other judicial order cannot be passed by filling up blanks on the printed proforma. Although as held by this Court in the case of Megh Nath Gupta v. State of U.P., [2008 (62) ACC 826.] in which reference has been made to the cases of Deputy Chief Controller Import and Export v. Roshan Lal Agrawal, [2003 (46) ACC 686 (SC).] U.P. Pollution Control Board v. Mohan Meakins, [(2000) 3 SCC 745 AIR 2000 SC 1456.] and Kanti Bhadra v. State of West Bengal, [2000 (40) ACC 441 (SC).] the Magistrate is not required to pass detailed reasoned order at the time of taking cognizance on the charge-sheet, but it does not mean that order of taking cognizance can be passed by filling up the blanks on printed proforma. At the time of passing any judicial order including the order taking cognizance on the charge-sheet, the Court is required to apply judicial mind and even the order of taking cognizance cannot be passed in mechanical manner. Therefore, the impugned order is liable to be quashed and the matter has to be sent back to the Court below for passing fresh order on the charge- sheet after applying judicial mind.

16. Appraising the issue of entertainability of the present Application preferred under Section 482 of the Code of Criminal Procedure, it would be apt to allude to the observations made by the Hon'ble Apex Court in the case of ***Priya Vrat Singh and others*** *versus* ***Shyam Ji Sahai***, reported in **(2008) 8 SCC 232**. For ready reference the relevant extract is quoted below:

"10. *The parameters for exercise of power under Section 482 have been laid down by this Court in several cases.*

11. '19. The section does not confer any new power on the High Court. It only saves *the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the*

principle quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercise ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

20……..”

17. In the light of the observations made by the Hon’ble Supreme Court, it is abundantly clear that the power under Section 482 of Criminal Procedure Code is very wide but at the same time, it is also true that the Court while exercising such power should be cautious enough to follow the established principles of law and should refrain from giving a prima facie decision on the basis of incomplete and hazy facts. Although there is no hard-and-fast rule with regard to the cases in which the extra-ordinary jurisdiction of this Court will be exercised under Section 482 of the Criminal Procedure Code. Needless to say that, while exercising powers under Section 482 of Criminal Procedure Code, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the said section though wide enough has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiate* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise

of the powers the court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

18. The bone of contention as advanced by the learned counsel for the Applicant is that the impugned cognizance/summoning order having been passed on a printed proforma by merely filling the blanks cannot be taken as an order passed with the application of judicial mind and as such the same is liable to be quashed. Since the arguments have been confined by the learned counsel, to the extent of challenge to the validity of the impugned cognizance order dated 25.07.2022 on the aforesaid ground, as such, it would be apposite for this Court to decide the said issue without adverting on the merits of the case and to judge the correctness of the allegations as well as the defence of the parties. Therefore, this Court refrains itself to make any observation on the First Information Report (F.I.R.) or the charge-sheet dated 14.05.2022.

19. Suffice it to note that, time and again the very practice of passing judicial order of taking cognizance by the learned Magistrates, on a printed proforma by simply filling the blanks, has been condemned by the Hon'ble Apex Court as well as by this Court. It would not be out of place to note that although no detailed order is required to be passed at the time of taking cognizance, but the use of blank printed proforma for passing the judicial order by the Magistrate is also not acceptable being indicative of non-application of judicial mind in passing the judicial order. While passing any judicial order including the order taking cognizance on the charge-sheet, the Court is required to apply judicial mind and the order of taking cognizance cannot be passed in mechanical manner.

20. In the instant case a bare perusal of the certified copy of the impugned order dated 25.07.2022 shows that the learned Additional Civil Judge (Judicial Division) / Judicial Magistrate, Court No.23, Azamgarh has passed

the impugned cognizance and summoning order simply on a printed proforma only by putting his short signature (initial) above the seal of the court, by filling only the figures of Case number, Name of accused, certain Sections of the Indian Penal Code, name of the Police Station, Date of issuance of the order and the next date fixed. Thus, it is abundantly clear that in the present case, impugned cognizance and summoning order has been passed without any application of mind as the same does not reflect any consideration by the learned Magistrate, qua the material on record to be sufficient to proceed against the accused-applicant, before taking cognizance of the offence under Sections 434 and 506 of the Indian Penal Code. Therefore, the impugned cognizance and summoning order is unsustainable in law and is liable to be quashed on this score alone.

21. In the facts and circumstances of the case where the learned Magistrate has initiated the criminal proceeding in the most mechanical manner evidently without application of mind, setting criminal proceedings into motion as a matter of course by issuing the impugned cognizance/summoning order on a printed proforma, such action on the part of the learned Magistrate is *dehor* of the provisions of Section 190 of the Code of Criminal Procedure, this Court in order to prevent the abuse of the process of Court and to secure the ends of justice finds reasons to entertain the present Application in exercise of its power under Section 482 of the Code of Criminal Procedure.

22. Taking into consideration the factual matrix of the case and the deliberations made herein above, this Court finds force in the submission made by the learned counsel for the applicant that the impugned summoning / cognizance order dated 25.07.2022 being prepared by filling the blanks on the printed proforma, in the most machinal manner without application of judicial mind, is legally unsustainable thereby, causing miscarriage of justice.

23. Consequently, the instant application under Section 482 of Code of Criminal Procedure is **allowed in part** and the impugned cognizance and summoning order dated 25.07.2022, passed by the learned Judicial Magistrate, Azamgarh is, hereby, set aside. The learned Magistrate concerned is directed to pass order afresh on the charge-sheet filed in Criminal Case No. 4647 of 2023 arising out of Case Crime No. 81 of 2022, (State versus Roshan and others) under Sections 434, 506 I.P.C Police Station Didarganj, Azamgarh, strictly in accordance with law and as discussed hereinabove within a period of three weeks from the date of production of certified copy of this order before it.

24. However, it is hereby made clear that this Court has not expressed any opinion on the merits of the case and the observations in the present judgment are only for the purpose of deciding the limited issue as noted hereinabove. It is further provided that in case, the learned Magistrate concerned chooses to pass order taking cognizance, it shall be open for the the applicant to seek appropriate remedy available to him under the law.

Order Date :- 7.5.2024
Ramakant/Abhishek Gupta