IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE G. S. AHLUWALIA

ON THE 23rd OF JULY, 2024

MISC. CRIMINAL CASE No. 60947 of 2022

ARUNENDRA TIWARI

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

(SHRI SHUBHAM DHAGAT – ADVOCATE FOR THE APPLICANT)

(SHRI MOHAN SAUSARKAR – GOVERNMENT ADVOCATE FOR THE RESPONDENTS/STATE)

ORDER

This application under section 482 of CrPC has been filed for quashment of Crime No.178/2022, registered at Police Station, Chakghat, District Rewa for offence under sections 294, 354 and 506 of IPC as well as the chargesheet dated 26.12.2022, which is pending before the Court of JMFC, Teonthar, District Rewa in RCT No.75/2023.

2. Challenging the FIR in question, it is submitted by the counsel for the applicant that the complainant lodged an FIR to the effect that on 6.8.2022 her husband and son had gone to Chakghat. At about 10:30 am when she was going towards her new house and was crossing the road, at that time the applicant came on a motorcycle and on account of old enmity started abusing her filthily in the name of mother and sister. When she objected to it, then with an evil intention, he held her tightly and threw her on the ground. On hearing her cries, Rajkumar Mishra and her daughter Neha Tiwari came on the spot and intervened in the matter. Thereafter, the applicant after leaving his motorcycle ran away

by extending a threat to her life. The entire incident was narrated by the complainant to her husband and thereafter the FIR was lodged.

3. It is submitted by the counsel for the applicant that in fact Ramayan Prasad Tiwari has filed a criminal complaint under section 200 of CrPC against the complainant and her son Anoop Tiwari for offence under sections 294, 323, 324, 506 of IPC. The applicant is a counsel for Ramayan Prasad Tiwari and therefore, he has been falsely implicated.

4. It is further submitted that on the date of incident in fact the complainant had stopped the motorcycle of the applicant and had threatened him that he should leave the case; otherwise he will have to face consequences and then she started fighting and grabbed the applicant and caused an injury by a sharp-edged weapon on the right side of his hand**.** Thus, it is submitted that the FIR in question is an outcome of the malafide intention of the complainant. Furthermore, the applicant had also made a complaint to the senior Police Officers but no action has been taken.

5. Heard the learned counsel for the parties.

6. So far as the contention of the applicant that the applicant has been falsely implicated in the case on account of the fact that he is appearing for Ramayan Prasad Tiwari in a criminal case instituted by him against the complainant and his son is concerned, the applicant has filed a copy of two ordersheets of the Court of JMFC, Teonthar, District Rewa. One ordersheet is dated 4.6.2019 and another ordersheet is dated 4.7.2019. On 4.6.2019 Shri Laxmikant Tiwari had appeared along with the complainant Ramayan Prasad Tiwari and had also filed his Vakalatnama. On 4.7.2019 the Presiding Officer was on leave and the

applicant had appeared as a counsel. For the reasons best known to the applicant, he has neither filed the copy of Vakalatnama, which was filed before the Court of JMFC, Teonthar, District Rewa along with the complaint case nor he has filed the complete ordersheets of the said case. On 4.6.2019 Ramayan Prasad Tiwari had appeared along with Shri Laxmikant Tiwari, therefore, it appears that in fact Shri Laxmikant Tiwari is the counsel for the complainant and on 4.7.2019 the applicant had appeared to seek adjournment for the simple reason that the Presiding Officer was on leave. Therefore, the counsel for the applicant could not substantiate his contentions that the applicant is being roped in for a solitary reason that he is the counsel for Ramayan Prasad Tiwari, who has filed a complaint against the present complainant. In fact one Laxmikant Tiwari appears to be the main counsel for Ramayan Prasad Tiwari.

7. Thus, under these circumstances it can be said that if the complainant Smt. Sheela Tiwari had any grievance, then she should have grievance against Laxmikant Tiwari and not against the present applicant.

8. It is next contended by counsel for the applicant that he is an Advocate by profession.

9. Accordingly, the counsel for applicant was directed to point out as to whether an advocate has any exemption from application of provision of IPC or not?

10. It was fairly conceded by the counsel for the applicant that if an act, which is otherwise is an offence under the provision of IPC has been committed by an Advocate, still it will remain an offence.

11. In the considered opinion of the Court if some offensive act has been committed by an Advocate, who is a law-knowing personality, then the matter becomes more serious and no one can claim any exemption from his prosecution only on the ground that he is an Advocate by profession.

12. So far as the mala fides are concerned, this Court has already considered the fact that the applicant has not been implicated only on the ground that he is appearing for Ramayan Prasad Tiwari in a complaint case filed by him against Smt. Sheela Tiwari, the complainant in the present case.

13. Even otherwise, in the light of judgment passed by the Supreme Court in the case of **Renu Kumari Vs. Sanjay Kumar and Others,** reported in **(2008) 12 SCC 346**, it is clear that if the allegations made in the FIR disclose the commission of cognizable offence, then the mala fides of the informant becomes secondary.

14. In the case of **Renu Kumari (supra)** it has been held as under :-

> "9. "8. Exercise of power under Section 482 CrPC in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of CrPC. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under CrPC, (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. The 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 the course of administration of justice on the principle of *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* (when the law gives a person anything, it gives him that without which it cannot exist). While exercising the 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 exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the 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 the 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. When no offence is disclosed by the report, the court may examine the question of fact. When a report is sought to be quashed, it is permissible to look into the materials to assess what the report has alleged and whether any offence is made out even if the allegations are accepted in toto.

9. In *R.P. Kapur v. State of Punjab* [AIR 1960 SC 866 : (1960) 3 SCR 388] this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings:

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge. (AIR p. 869)

10. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 CrPC, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. The court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 CrPC and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604] . A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of rare cases. The illustrative categories indicated by this Court are as follows : (SCC pp. 378-79, para 102)

‘(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 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.

(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.'

11. As noted above, the powers possessed by the High Court under Section 482 CrPC are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision, in exercise of this

power, is based on sound principles. The inherent power should not be exercised to stifle a legitimate 28 prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] and Raghubir Saran (Dr.) v. State of Bihar [AIR 1964 SC 1 : (1964) 1 Cri LJ 1] .] It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. [See Dhanalakshmi v. R. Prasanna Kumar [1990 Supp SCC 686 : 1991 SCC (Cri) 142] , State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , State of Kerala v. O.C. Kuttan [(1999) 2 29 SCC 651 : 1999 SCC (Cri) 304] , State of U.P. v. O.P. Sharma [(1996) 7 SCC 705 : 1996 SCC (Cri) 497] , Rashmi Kumar v. Mahesh Kumar Bhada [(1997) 2 SCC 397 : 1997 SCC (Cri) 415] , Satvinder Kaur v. State (Govt. of NCT of Delhi) [(1999) 8 SCC 728 : 1999 SCC (Cri) 1503] and Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] .]”

> The above position was again reiterated in State of Karnataka v. M. Devendrappa [(2002) 3 SCC 89 : 2002 SCC (Cri) 539] , State of M.P. v. Awadh Kishore Gupta [(2004) 1 SCC 691 : 2004 SCC (Cri) 353] and State of Orissa v. Saroj Kumar Sahoo [(2005) 13 SCC 540 : (2006) 2 SCC (Cri) 272], SCC pp. 547-50, paras 8-11."

15. So far as the allegations made in the FIR are concerned, the applicant himself has raised Ground No.-D, which reads as under :-

> "D. For that, the applicant stated that he was riding his motorbike, MP17 MT5670, to Teonthar Court at approximately 10:45 am and Kush Kumar Mishra drove the motorcycle. Sheela Tiwari stopped his motorbike while waving a weapon (a khurpa). She said you should go to Kush Kumar Mishra and abused the applicant in front of him. She also said that you shouldn't file a lawsuit against me. She then started fighting and grabbed the applicant and cut him with this weapon (khurpa) on the right side of his hand. Complainant further threatened to murder the applicant if he tried to enter from this side ever."

16. From the plain reading of Ground-D it is clear that the applicant himself has admitted that on the date of incident, he was going on a motorcycle and some dispute had taken place between him and the complainant Sheela Tiwari.

17. Thus, the happening of an incident on 6.8.2022 is supported by the applicant himself.

18. So far as the defence raised by the applicant that he was caused injury by the complainant Sheela Tiwari is concerned, the same cannot be accepted in absence of any medical report. Even otherwise, the applicant did not lodge any report against Smt. Sheela Tiwari. On mere

making of complaints to the senior police officers after the FIR is lodge, it cannot be said that the applicant has been falsely implicated. Thus, it is *prima facie* clear that in fact it was the applicant, who had assaulted the complainant Smt. Sheela Tiwari.

19. As the allegations made in the FIR make out a cognizable offence, therefore, no case is made out warranting interference.

20. The application fails and is hereby **dismissed.**

(G.S. AHLUWALIA)
JUDGE

TG/-