

Reserved

Neutral Citation No. - 2025:AHC:63369

Court No. - 71

Case :- APPLICATION U/S 482 No. - 20057 of 2023

Applicant :- Dinesh Kumar Verma

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Ajit Kumar,Rajneesh Pratap Singh

Counsel for Opposite Party :- G.A.,Sanjay Kumar Yadav

Hon'ble Raj Beer Singh,J.

1. Heard Sri Rajneesh Pratap Singh, learned counsel for the applicant and Sri Gyan Prakash Singh, learned Deputy Solicitor General of India along with Sri Sanjay Kumar Yadav, learned counsel for C.B.I. and perused the record.

2. This application u/s 482 Cr.P.C. has been preferred for quashing of entire proceedings, including summoning order dated 09.01.2023, of Case No. 4 of 2023 (C.B.I. Vs. Dinesh Kumar Verma), in respect of charge-sheet dated 30.12.2022, under Section 166A(b)(c), 167 IPC, arising out of F.I.R. No. RC 1202020S0005 of 2020, under Sections 307, 376D, 302 IPC and Section 3 SC/ST Act, P.S.- C.B.I., A.C.B., District- Ghaziabad. By way of supplementary affidavit, the order dated 17.08.2023 passed by learned Special Judicial Magistrate, (C.B.I.), Ghaziabad in aforesaid case is also being impugned, whereby the discharge application filed by the applicant under Section 239 Cr.P.C. has been rejected.

3. The facts in brief of the matter are that on 14.09.2020 at about 10:30 AM, the informant lodged first information report against one Sandeep for offence under Section – 307 I.P.C. and Section 3(2)(v) S.C./S.T. Act, alleging that on 14.09.2020 his sister (hereinafter referred as victim) along with his mother has gone to collect fodder. While his sister / victim was collecting fodder at some distance from his mother,

said Sandeep tried to kill her by strangle her neck. When victim cried, his mother exhorted that she was coming there and at the same time said Sandeep ran away. This incident took place at about 09:30 AM. After registration of case the investigation was taken up.

4. In his statement recorded under Section- 161 Cr.P.C., the informant has inter-alia stated that he was informed about the incident at 09:30 AM by one Chhotu and thereafter, he along with his grand mother Smt. Shanti Devi and some other persons, reached at the spot. At that time his sister (victim) was in semi-conscious state and when inquired, she has stated the name of Sandeep son of Guddu. The informant along with his mother took the victim to the police station and a complaint was made to the police. The informant has alleged that police did not take his sister to hospital and asked him to take his sister / victim to the hospital. The informant requested that a police vehicle may be provided for taking her to the hospital but they told that the way the victim has been brought here, the same way she be taken by him to the hospital. The informant took the victim to District Hospital, Hathras and one lady constable and one male constable were sent with them and at about 11:00 AM victim was admitted there. While she was being provided oxygen through bottle, she had blood vomiting twice. The doctors told the informant to take the victim to Aligarh Medical Hospital. The informant and his family members took the victim to Aligarh Medical Hospital and her treatment started there at about 08:00-09:00 PM. On 16.09.2020, the victim gained some consciousness. The mother of informant has informed him that she was told by the victim that said Sandeep and one Ramu, Ravi and Lavkush have subjected her to perforce and Sandeep has dragged her into '*khet*'. Accordingly, on 17.09.2020 the informant has submitted an application to the Superintendent of Police, Hathras. On 19.09.2020 some police officials have visited Aligarh Medical Hospital for statement of victim. On 22.09.2020 the Circle Officer, Sadabad has reached at the hospital for recording her statement. On 22.09.2020 the Magistrate has recorded

statement in Hospital. On 24.09.2020 the condition of victim has deteriorated and consequently on 28.09.2020 she was sent to Safdarganj Hospital, Delhi. On 29.09.2020 the victim passed away during treatment.

5. The informant has further alleged that on 29.09.2020 police brought the dead body of victim in an ambulance in the night at about 12:00-01:00 AM and several senior officers, including District Magistrate and Superintendent of Police, have reached there. The officials told that victim has to be cremated in the night itself. The father of informant and his family members insisted that they would cremate the victim at 06:00 AM but the police forcibly took the dead body of victim and her dead body was burnt (cremated) in the night itself.

6. It appears that investigation of the case was transferred to the Central Bureau of Investigation (herein referred as C.B.I.) by order dated 10.10.2020. The C.B.I. registered a fresh first information report on 11.10.2020 under Section 307, 376-D, 302 I.P.C. and Section – 3(2)(v) S.C./S.T. Act at Police Station – A.C.B., Ghaziabad and started investigation.

7. After investigation, charge-sheet was submitted by CBI on 18.12.2020 against four accused persons, namely, Sandeep Sisodiya @ Chandu, Lavkush, Ramu @ Ram Kumar and Ravi @ Ravindra for offence under Section - 302, 376, 376-A, 376-D I.P.C. and Section – 3(2)(v) S.C./S.T. Act and further investigation was kept open. Investigation revealed that applicant-accused Dinesh Kumar Verma, who was posted as SHO / In-charge of Police Station – Chandpa did not restrict the media / local reporters to approach the victim and capture her photographs and video of victim inside the premises of police station, whereas being SHO it was his duty to maintain the confidentiality and dignity of the victim. The applicant did not examine the victim at the police station and it was the duty of the SHO to register a case on the basis of statement of victim. It was found that applicant failed to act as mandated by law, rules and guidelines. Video of victim was recorded by applicant in his mobile phone

but he did not take any initiative to record her statement. The applicant did not refer the victim to hospital for examination of sexual assault, whereas she has uttered word '*jabardasti*'. The 'Chithi Majroobi' was prepared in a routine manner. No ambulance / vehicle was arranged for transport of victim to the hospital and she was sent to the hospital by a private shared auto. False entries were made in General Diary to the effect that lady constable Krishna was sent for conducting examination of injuries of victim. While at that time victim was lying in the platform of police station on 14.09.2020 and lady constable Krishna arrived at Police Station – Chandpa after departure of victim and neither she has met the victim nor examined the injuries of victim. Without examining injuries of victim, false entries were made to the effect that there is no injury upon the victim. The CBI obtained sanction under Section – 197 Cr.P.C. and charge-sheet [supplementary report under Section – 173 (8) Cr.P.C.] was submitted against applicant for offence under Section - 166A(b)(c) and 167 I.P.C.. The Court took cognizance and summoned the applicant vide summoning order dated 09.01.2023. It appears that applicant has moved an application for discharge, which was rejected by the trial court vide order dated 17.08.2023

8. Learned counsel for applicant submitted that there is no evidence that applicant has done any direct or indirect unlawful act and no prima facie case is made out against him. The applicant was working as SHO of Police Station – Chandpa. The allegations levelled against the applicant are false. The victim was brought at the police station all of sudden and that family members of victim were also present and a crowd had assembled there. Without creating any panic, applicant tried to do all formalities required under law. Some reporters have reached there in the name of freedom of speech and expression and they tried to disturb law and order and that informant has also provided support to said persons in order to obtain active and effective action. The applicant has not used force at that point of time otherwise things might have created further hurdle to the victim. The

applicant has not resisted to any written complaint and he has asked the informant whether they are willing to submit any written or oral complaint and at that time applicant has no reason to doubt that actual facts were not demonstrated by the informant in his written complaint. In view of condition of victim, applicant was worried about health condition of victim and that without examining the issue regarding any sexual assault, the victim was sent for hospital without any undue delay. There were no reasons that applicant would doubt the mother and brother of victim about the facts stated by them about the incident. Absolutely nothing was brought into the notice of applicant regarding any sexual assault upon victim and as a bonafide human mistake applicant was not able to mark the single word 'jabardasti' stated by the victim.

9. It is further submitted that under provisions of law, no specific and mandatory format has been prescribed for the purpose of examination of victim and that it was only for speedy treatment that the applicant has done all necessary acts in a bonafide manner. There is absolutely nothing to show that applicant has any ulterior motive. There was absolutely no ulterior aspect on the part of applicant for not arranging proper vehicle for sending the victim to hospital in as much as the first available mode of transport was used for the said purpose. All necessary acts were to be required in the matter and that in the police station only one vehicle was in working condition and that applicant has also to make efforts to apprehend the accused. The family of victim did not raise any issue regarding public transport as otherwise the delay may have been occurred in treatment of victim.

10. It is further submitted that due to some media coverage and politically motivated reasons, a false narration was created that injustice has been done by administration in respect of victim and the applicant was placed under suspension by imputing negligence without any evidence. After the informant has submitted application about the alleged incident, as per standard procedure a lady police official has talked with victim and her

mother but they did not make any complaint about sexual assault upon victim. In view of attending facts, the term 'jabardasti' did not create any doubt in the mind of applicant. The applicant has told the informant that he has given specific direction for registration of the case in terms of provisions of Section – 154 Cr.P.C. and all relevant facts were brought into the notice of the superior officers.

11. Learned counsel has referred provisions of Section – 166A (b)(c) and 167 I.P.C. and submitted that no prima facie case under is made out. General diary of police station is being maintained as per provisions of Section – 44 of Police Act and that any wrong entry or non entry would not create any material effect on the case of prosecution and it can only be termed an irregularity and not the illegality. The 'chithi majroobi' was also in accordance with law and the fact the name of lady constable was wrongly mentioned in General Diary is not a material fact and the same did not cause any harm to any person. Learned counsel has referred facts of the matter and submitted that applicant has been charge-sheeted in an arbitrary manner and no prima facie case is made out against him. In support of his contentions, learned counsel for the applicant has placed reliance upon following case laws :-

(i) **Abhishek Vs. State of Madhya Pradesh** 2023 (4) R.C.R. Criminal 239 (Para 11)

(ii) **Ramesh Chandra Gupta Vs. State of U.P.** 2023 (1) R.C.R. Criminal 498 (Para 16)

(iii) **Technofab Engineering Ltd. Vs. Bengal Mills Stores Supply Co.** 2016 (3) R.C.R. Criminal 913 (Para 10)

(iv) **State of Punjab Vs. Inder Mohan Chopra** 2009 (2) R.C.R. Criminal 241 (Para 7 and 8)

(v) **Lalita Kumari Vs. Govt. of U.P.** CRLR (SC)-2014-0-236

12. It is further submitted that merely because charge has been framed against applicant or that remedy of revision is available against charge or summoning order, it cannot be said that this application under Section – 482 Cr.P.C. is not maintainable. In this connection, learned counsel for the applicant has referred case of **Vijay and Another Vs. State of Maharashtra and Another** 2016(12) Scale 492, **Punjab State Warehousing Corporation Faridkot Vs. M/s Sh. Durga Ji Traders and Others** 2012(1) RCR (Criminal) 358 and **Dhariwal Tobacco Products Ltd. Vs. State of Maharashtra** LAWS(SC)-2008-12-72.

13. Learned Deputy Solicitor General appearing for CBI submitted that in the above referred case first charge-sheet was submitted by the CBI before Special Judge, S.C./S.T. Act, Hathras on 18.12.2020 against four accused persons, namely, Sandeep Sisodiya @ Chandu, Lavkush, Ramu @ Ram Kumar and Ravi @ Ravindra for offence under Section - 302, 376, 376-A, 376-D I.P.C. and Section – 3(2)(v) S.C./S.T. Act and that further investigation was kept pending. During investigation, the role of police officials, who have initially dealt with the case, was investigated and it was revealed that when victim was brought to the police station in an injured condition, being the In-charge of the police station, the applicant did not restrict the media / local reporters to approach the victim and capture photographs / video of victim inside the premises of the police station. Being In-charge of the police station, it was his bonafide duty as mandated by law to maintain confidentiality and dignity of victim but he failed to do so. Further, the applicant did not examine and record the statement of victim at the police station whereas the first information report might have been registered on the basis of statement of victim. When the victim was present in the premises of police station, she was conscious and oriented and he has even spoken to the victim but first information report was registered on the basis of complaint of her brother. The video of victim was also recorded by the applicant in his mobile phone but he did not take any initiative to record her oral statement or to go through video carefully. It

was submitted that in the said video victim has clearly used words “jabardasti nahi karne diya tasu” meaning thereby that she was assaulted for resistance to sexual assault. Further, Sections 354 & 376 I.P.C. were not included in the first information report.

14. It is further submitted that applicant has not referred the victim to medical officer for conducting sexual assault examination, whereas she has uttered word ‘jabardasti’. The ‘chithi majroobi’ was filled in a routine and casual manner without any specific mention about nature of injury/assault. No ambulance service / police vehicle was arranged to send the victim to the hospital by police instead she was sent by a private shared auto. The applicant has directed lady constable Neha, who accompanied the victim to Bagla Hospital, to return from the hospital after victim was referred to Aligarh Hospital. False entries were made in the General Diary by the G.D. In-charge H.C./Head Moharir Mahesh Pal Singh. He has recorded a false entry vide G.D. Entry No. 19 at 10:30 A.M. to the effect that lady constable Krishna was sent for conducting examination of injuries of victim while at that time victim was lying in the platform of police station and said lady constable Krishna arrived at the police station after departure of the victim from police station and neither she met the victim nor examined injuries of victim. Without examining injuries of victim, a false entry was made in the G.D. that there is no injury upon victim. The applicant has been charge sheeted on the basis of evidence and that a prima facie case under Section - 166A(b)(c) and 167 I.P.C. is made out and the Trial Court has already taken cognizance. It is further submitted that discharge application filed by the applicant has already been rejected by the Trial Court vide order dated 17.08.2023 and after that charges have been framed against applicant on 12.10.2023. This application under Section 482 CrPC is not maintainable against the order dated 17.08.2023. Referring to facts of the matter, it was submitted that a prima facie case is made out against applicant. In support of his contentions, learned Deputy Solicitor General has placed reliance upon following case laws :-

(I) Ratilal Bhanji Mithani Vs. State of Maharashtra AIR 1979 Supreme Court 94

(ii) Central Bureau of Investigation Vs. Aryan Singh AIR Online 2021 SC 210 AIR 2023 Supreme Court 1987

(iii) Lalita Kumari Vs. Govt. of U.P. and Others AIR 2014 Supreme Court 187

15. I have considered rival submissions and perused the record.

16. An objection was raised on behalf of CBI that charges have already been framed by the trial court and the appropriate remedy against the order of charge is to file a revision and thus, this application under Section 482 CrPC is not maintainable. In this connection it may be stated that Section 482 Cr.P.C. saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It begins with a non-obstante clause that *‘Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice’*. Thus, it appears that when the High Court on examination of the record finds that there is grave miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with or there is failure of justice, it is but the duty of the Court to have it corrected at the inception lest grave miscarriage of justice would ensue. In case of Prabhu Chawla 2016(4) RCR (Criminal) 270, a three judges Bench of Hon’ble Apex Court held despite the alternate remedy of remedy there is no total ban on the exercise of inherent power where abuse of the process of the court or other extraordinary situation excites the court’s jurisdiction. The bar of revision will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial.

The High Court can examine the matter in an appropriate case under its inherent powers. It was held that there can be no total ban on the exercise of such wholesome jurisdiction where, “abuse of the process of the Court or other extraordinary situation excites the court’s jurisdiction. Similarly in case of Dhariwal Tobacco Product Ltd. (supra), it was observed that whenever the High Court comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of court and that the ends of justice require that the proceedings should be quashed, it would not hesitate to do so. In case of Punjab State Warehousing Corporation (supra), it was observed that availability of an alternate remedy of filing an appeal is not an absolute bar in entertaining a petition under Section 482 CrPC. In view of these pronouncements of Apex Court, it can not be held that instant application under Section 482 CrPC is not maintainable, however needless to state that as charges have already been framed thus, inherent powers have to be exercised subject to limitation as observed in case of Prabhu Chawla (supra).

17. The legal position on the issue of quashing of criminal proceedings is well-settled that the jurisdiction to quash a complaint, FIR or a charge-sheet should be exercised sparingly and only in exceptional cases. However, where the allegations made in the FIR or the complaint and material on record even if 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, the charge-sheet may be quashed in exercise of inherent powers under Section 482 of the Cr.P.C. In well celebrated judgment reported in AIR 1992 SC 605 **State of Haryana and others Vs. Ch. Bhajan Lal**, Hon’ble Supreme Court has carved out certain guidelines, wherein FIR or proceedings may be quashed but cautioned that the power to quash FIR or proceedings should be exercised sparingly and that too in the rarest of rare cases. In case of **Ramesh Chand Gupta (supra)**, the Apex Court has observed that exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent

power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. The Court in Para no.102 in *State of Haryana and Others v. Bhajan Lal and Others (supra)*, held as under :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, 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.

(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 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.”

18. In case of **Abhishek (supra)**, the Apex Court held:

“12. The contours of the power to quash criminal proceedings under Section 482 Cr.P.C. are well defined. In V. Ravi Kumar vs. State represented by Inspector of Police, District Crime Branch, Salem, Tamil Nadu and others [(2019) 14 SCC 568], this Court affirmed that where an accused seeks quashing of the FIR, invoking the inherent jurisdiction of the High Court, it is wholly impermissible for the High Court to enter into the factual arena to adjudicate the correctness of the allegations in the complaint. In M/s. Neeharika Infrastructure (P). Ltd. vs. State of Maharashtra and others [Criminal Appeal No.330 of 2021, decided on 13.04.2021], a 3-Judge Bench of this Court elaborately considered the scope and extent of the power under Section 482 Cr.P.C. It was observed that the power of quashing should be exercised sparingly, with circumspection and in the rarest of rare cases, such standard not being confused with the norm formulated in the context of the death penalty. It was further observed that while examining the

FIR/complaint, quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made therein, but if the Court thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, and more particularly, the parameters laid down by this Court in R.P. Kapur vs. State of Punjab (AIR 1960 SC 866) and State of Haryana and others vs. Bhajan Lal and others [(1992) Supp (1) SCC 335], the Court would have jurisdiction to quash the FIR/complaint.”

19. In case of **State of Punjab Vs. Inder Mohan Chopra (supra)**, the court observed that when exercising jurisdiction under Section 482 of the Code, 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 no doubt should not be an instrument of oppression, or, needless harassment. 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. The scope of exercise of power under Section 482 Cr.P.C. 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 the Court in **State of Haryana v. Bhajan Lal** (supra). A note of caution was, however, added that the power should be exercised sparingly and that too in rarest of rare cases.

20. In case of **Technofab Engineering Ltd (supra)**, the Court held:

“We have considered the rival submissions. We are of the view that the law on the point is quite well settled in a series of judgments of this Court including Hridaya Ranjan Pd. Verma versus State of Bihar¹, Anil Mahajan versus Bhor Industries Ltd.², Indian Oil Corporation versus NEPC India Ltd. ³, Inder Mohan Goswami versus State of Uttaranchal and Chandran Ratnaswami versus K.C. Palanisamy.

“9. In Indian Oil Corporation case (supra) it was observed :

“12. The principles relating to exercise of jurisdiction under Section of the Code of Criminal (2000) 4 SCC 168 (2005) 10 SCC 228 (2006) 6 SCC 736 (2007) 12 SCC 1 (2013) 6 SCC 740 Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few - Madhavrao Jiwaji Rao Scindia v. Sambhajirao Chandrojirao Angre [1988 (1) SCC 692], State of Haryana vs. Bhajanlal [1992 Supp (1) SCC 335], Rupan Deol Bajaj vs. Kanwar Pal Singh Gill [1995 (6) SCC 194], Central Bureau of Investigation v.Duncans Agro Industries Ltd., [1996 (5) SCC 591], State of Bihar vs. Rajendra Agrawalla [1996 (8) SCC 164], Rajesh Bajaj v. State NCT of Delhi, [1999 (3) SCC 259], Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [2000 (3) SCC 269], Hridaya Ranjan Prasad Verma v. State of Bihar [2000 (4) SCC 168], M. Krishnan vs Vijay Kumar [2001 (8) SCC 645], and Zandu Phamaceutical Works Ltd. v. Mohd. Sharaful Haque [2005 (1) SCC 122]. The principles, relevant to our purpose are :

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed.

Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”

21. Here it would be pertinent to mention that in case of **Central Bureau of Investigation Vs. Aryan Singh** (supra), the Apex Court observed that as per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr.P.C., the Court is not required to conduct the mini trial. The Court held:

“As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr.P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution / investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution / investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr.P.C., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not”.

One another reason pointed by the High Court is that the initiation of the criminal proceedings / proceedings is malicious. At this stage, it is required to be noted that the investigation was handed over to the CBI pursuant to the directions issued by the High Court. That thereafter, on conclusion of the investigation, the accused persons have been chargesheeted. Therefore, the High Court has erred in observing at this stage that the initiation of the criminal proceedings / proceedings is malicious. Whether the criminal proceedings was/were malicious or not, is not required to be considered at this stage. The same is required to be considered at the conclusion of the trial.”

22. In the instant matter the main premises, on which the quashing of impugned proceedings is sought, is that no prima facie case is made out against applicant. The applicant has been charge-sheeted for offence under Section - 166A(b)(c) and 167 I.P.C. The provisions of 166A and 167 IPC read as under:

“166A. Public servant disobeying direction under law.—Whoever, being a public servant,— (a) xxxxxx...

(b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or (c)

167. Public servant framing an incorrect document with intent to cause injury.—Whoever, being a public servant, and being, as [such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record] in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

23. Section 166A IPC deals with Public servant disobeying direction under law. This section lays down three kinds of derelictions of law by a public servant which would amount to an offence thereunder: public servant:-

(a) knowingly disobeys any direction of law prohibiting him from requiring attendance at any place of any person for the purpose of investigation into an offence or any other matter;

(b) knowingly disobeys, to the prejudice of any person, any direction of law regulating the manner in which he is to conduct such investigation; and sub-clause (c) fails to record FIR in relation to offence under certain sections specified therein.

24. While Section 166 IPC deals with the disobedience of any direction of law in a general sense, a relatively more specific provision as contained in Section 167 IPC deals with particular instance of a public servant assigned the duty of preparation of a document, incorrectly prepares, frames, translates such document. To constitute a charge under section 167 IPC, it must be shown that such public servant knew or believed that he was incorrectly framing or translating the document, and that he did the same with the intent or with the knowledge that it was likely that he would

thereby cause injury. The intention to cause injury to any person by perversion of official duty is a requirement under the Section, however, where the act is in itself unlawful, the proof of justification or excuse lies with the accused public servant; and in failure thereof, the law implies criminal intent.

25. Keeping in view the aforesaid legal position, in the instant matter it appears from record that regarding the incident, which took place with the victim / deceased, the brother of victim has made complaint to the police and consequently first information report was registered on 14.09.2020 on 10:30 hours for offence under Section 307 IPC and Section 3(2)(V) SC/ST Act against Sandeep. In his statement under Section 161 Cr.P.C., the informant has inter-alia made allegations that when the victim was brought to the police station, despite his request the police did not take the victim to the hospital. The applicant was posted as Station House Officer of the police station. The informant has alleged that he has requested the police to send the victim to the hospital by a police vehicle but the police told that the way she (victim) has been brought to the police station the same way she has to be taken to the hospital by the informant and ultimately the victim was taken to the hospital by the informant in a shared auto. It has come in evidence that at that time there were two police vehicles in the police station. Further, when victim was brought at the police station, she was stated to be in conscious condition but her statement was not recorded. In view of these facts, first information report must have been recorded on the basis of her statement but it was not done. During investigation, it was found that applicant has prepared a video of victim in his mobile phone and therein victim has inter-alia stated that “jabardasti nahi karne diya tasu”, which indicated that victim was subjected to molestation but despite that *chitthi mazrubi* (letter to medical officer for examination of victim) was prepared in a routine manner without mentioning any specific detail. In view aforesaid statement of victim, the *chitthi mazrubi* must have been prepared for her examination regarding sexual assault but the *chitthi*

mazrubi was prepared in an ordinary manner without any such specific detail. The contention of learned counsel for applicant that applicant could not mark the term ‘jabardasti’, in video of victim and it was a bonafide mistake, can not be accepted. It may be stated that as per SOP, available on website of Ministry of Home Affairs (Annexure no.30) regarding investigation and prosecution of rape cases, victim should be sent for medical examination by the Investigating Officer under properly filled in medical examination sheet. In the instant matter that guideline has not been followed by the applicant. Further, in the video of victim prepared by the applicant, she has stated words “jabardasti nahi karne diya tasu”, which implies attempt of molestation and thus first information must be registered under appropriate sections of IPC relating to molestation but it was not done. Thus, the act / omission of applicant makes out a case under Section 166(C) IPC. From the video of the victim, the applicant can be attributed to the knowledge that he was aware that it was a case of sexual molestation but despite that no statement of victim was recorded and first information report was registered on the basis of *tehreer* submitted by her brother.

26. It was further found that when the victim was brought at the police station, a number of media persons / local reporters have gathered there and they were allowed to approach the victim and capture her photographs and make video inside the police station. From video of victim made by applicant in his mobile phone, it was clear that it was a case of molestation and being SHO, it was duty of the applicant that identity of the victim is not disclosed but he did not stop any media person from contacting the victim and taking her photographs and making her video but he failed to do so. As per Para no.26 of the above referred SOP, (available on the website of Ministry of Home Affairs and annexed as Annexure no.30) victim under no circumstances was to be produced before the media. In the said guidelines, it has been specifically provided that victim of sexual offences should not be made public and due care should be taken not to reveal her identity but these guidelines were violated.

27. The investigation has revealed that Head Constable Mahesh Pal Singh has made a false entry in the General Diary at Serial No.19 at 10:30 AM to the effect that lady constable Krishna was sent with victim for medical examination of victim, whereas at that time victim was lying in the cemented platform of the police station Chandpa and that lady constable Krishna has reached at the police station after the victim was already taken to the hospital. Similarly a false entry was made that there were no injury mark on the person of victim. As per provisions of Section 44 of Police Act, as applicable to State of Uttar Pradesh, it is duty of every officer in-charge of a police-station to keep a general diary in such form as shall, from time to time, be prescribed by the State Government and to record therein. Thus, being Station House Officer of the police station, the applicant was custodian of the General Diary and therefore a false entries can not be made without direction or consent of the applicant. Thus, it is apparent that false entries in General Diary were made at the instance of applicant. The contention of learned counsel for the applicant that the said G.D. entry was in-consequential and it could not have any adverse effect on the case, would not absolve the applicant from his duty as per Police Act and the relevant Circulars. This fact alone brings the mischief of applicant within the purview of Section 167 IPC. It was found during investigation that the in the police station the applicant did not get examine the victim to ascertain whether she has sustained any injury or not and that he has made a false averment to the effect that there was no injury mark upon the victim. In this connection also a false entry was made in the General Diary.

28. All the above referred facts emerged in investigation not only indicate lack of sensitiveness but dereliction of duty on part of applicant and act and omissions of applicant violate the provisions of law and rules. The applicant has been charge-sheeted by the CBI for offence under Section 166A(b)(c) and 167 I.P.C. In view of statement of complainant and other witnesses and the material collected during investigation, including G.D. entries and CCTV footage of police station, it can not be said that no

prima-facie case is made out against the applicant. Further, charges have already been made against applicant by the trial Court and trial is stated to be in progress. As held in case of **Central Bureau of Investigation Vs. Aryan Singh** (supra), at the stage of charge / discharge, while exercising the powers under Section 482 Cr.P.C. for the purpose of quashing of proceedings, the Court is not required to conduct a mini trial. This is not the stage where the prosecution / investigating agency is required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution / investigating agency. At the stage of charge / discharge while exercising the powers under Section 482 Cr.P.C., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not. In the instant case the submissions raised by learned counsel for the applicants call for determination on questions of fact which may be adequately adjudicated upon only by the trial court and even the submissions made on points of law can also be more appropriately gone into only by the trial court. Adjudication of questions of facts and appreciation of evidence or examining the reliability and credibility of the prosecution version, does not fall within the arena of jurisdiction under Section – 482 Cr.P.C. Considering entire facts and position of law, no case for quashing of impugned proceedings is made out. The instant application under Section 482 Cr.P.C. lacks merit and thus, liable to be dismissed.

29. The application under Section 482 Cr.P.C. is hereby **dismissed**.

Order Date :- 25.4.2025

'SP'/-