Court No. - 52

Case :- APPLICATION U/S 482 No. - 23455 of 2016

Applicant :- Mukesh Khurana
Opposite Party :- State Of U.P. And Another
Counsel for Applicant :- Pradeep Kumar
Counsel for Opposite Party :- G.A.

Hon'ble Karuna Nand Bajpayee,J.

This application under Section 482 Cr.P.C. has been filed seeking the quashing of the entire proceeding of Complaint Case No. 1575 of 2015, under Section 138 N.I. Act, pending in the court of Additional Civil Judge (J.D.), Court No. 3, Ghaziabad.

Heard applicant's counsel and learned AGA.

Entire record has been perused.

All the contentions raised by the applicant's counsel relate to disputed questions of fact. The court has also been called upon to adjudge the testimonial worth of prosecution evidence and evaluate the same on the basis of various intricacies of factual details which have been touched upon by the learned counsel. The veracity and credibility of material furnished on behalf of the prosecution has been questioned and false implication has been pleaded.

The law regarding sufficiency of material which may justify the summoning of accused and also the court's decision to proceed against him in a given case is well settled. The court has to eschew itself from embarking upon a roving enquiry into the last details of the case. It is also not advisable to adjudge whether the case shall ultimately end in conviction or not. Only a prima facie satisfaction of the court about the existence of sufficient ground to proceed in the matter is required.

Through a catena of decisions given by Hon'ble Apex Court this legal aspect has been expatiated upon at length and the law that has evolved over a period of several decades is too well settled. The cases of (1) ***Chandra Deo Singh Vs. Prokash Chandra Bose AIR 1963 SC 1430 ,*** (2) ***Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker AIR 1960 SC 1113*** *and* (3) ***Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi 1976 3 SCC 736*** may be usefully referred to in this regard.

The Apex Court decisions given in the case of **R.P. Kapur Vs. State of Punjab AIR 1960 SC 866** and in the case of **State of Haryana Vs. Bhajan Lal 1992 SCC(Cr.) 426** have also recognized certain categories by way of illustration which may justify the quashing of a complaint or charge sheet. Some of them are akin to the illustrative examples given in the above referred case of **Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi 1976 3 SCC 736.** The cases where the allegations made against the accused or the evidence collected by the Investigating Officer do not constitute any offence or where the allegations are absurd or extremely improbable impossible to believe or where prosecution is legally barred or where criminal proceeding is malicious and malafide instituted with ulterior motive of grudge and vengeance alone may be the fit cases for the High Court in which the criminal proceedings may be quashed. Hon'ble

Apex Court in Bhajan Lal's case has recognized certain categories in which Section-482 of Cr.P.C. or Article-226 of the Constitution may be successfully invoked.

Illumined by the case law referred to herein above, this Court has adverted to the entire record of the case.

The submissions made by the applicant's counsel call for adjudication on pure questions of fact which may be adequately adjudicated upon only by the trial court and while doing so even the submissions made on points of law can also be more appropriately gone into by the trial court in this case. This Court does not deem it proper, and therefore cannot be persuaded to have a pre-trial before the actual trial begins. A threadbare discussion of various facts and circumstances, as they emerge from the allegations made against the accused, is being purposely avoided by the Court for the reason, lest the same might cause any prejudice to either side during trial. But it shall suffice to observe that the perusal of the complaint, and also the material available on record make out a prima facie case against the accused at this stage and there appear to be sufficient ground for proceeding against the accused. I do not find any justification to quash the proceedings against the applicant arising out of them as the case does not fall in any of the categories recognized by the Apex Court which may justify their quashing.

The prayer for quashing the same is refused as I do not see any abuse of the Court's process either.

In the last, the counsel has urged before the Court that the facts and circumstances of the case and the nature of offence involved are such in which the litigating parties should be given a chance to settle this matter amicably and for this purpose some protective direction may be given by this Court so that adequate steps may be taken in furtherance of the same object. The counsel has also placed reliance on the Apex Court given in the case of **Damodar S. Prabhu Vs. Sayed Babalal H., 2010(5) SCC 663** in this regard. Submission is that the Apex Court decision has taken cognizance of the heavy pendency of the cases in the courts which may result ultimately in the chocking of criminal justice system. It has been urged that with the laudable object of providing the rival parties, who have hitherto locked their horns in litigation, an opportunity to arrive at a mutually agreeable settlement and put an end to the escalating litigations, the compounding of the offence has not only been encouraged but in order to given incentive to do so at the earliest stage, certain directions have also been issued by the Hon'ble Supreme Court.

I have considered the last submission made by the counsel in the light of the aforesaid case law. It may be relevant to quote the observation made by the Hon'ble Apex Court in the case of **Damodar S. Prabhu (supra)** which read as follows :-

"***17.*** *In a recently published commentary, the following observations have been made with regard to the offence punishable under Section 138 of the Act [Cited from: Arun Mohan, Some thoughts towards law reforms on the topic of Section 138, Negotiable Instruments Act-Tackling an avalanche of cases (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2009) at p. 5] :*

"... Unlike that for other forms of crime, the punishment here (in so far as the complainant is concerned) is not a means of seeking retribution, but is more a means to ensure payment of money. The complainant's interest lies primarily in recovering the money rather than seeing the drawer of the cheque in jail. The threat of jail is only a mode to ensure recovery. As against the accused who is willing to undergo a jail term, there is little available as remedy for the holder of the cheque.

If we were to examine the number of complaints filed which were `compromised' or `settled' before the final judgment on one side and the cases which proceeded to judgment and conviction on the other, we will find that the bulk was settled and only a miniscule number continued."

***18.** It is quite obvious that with respect to the offence of dishonour of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect. There is also some support for the apprehensions raised by the learned Attorney General that a majority of cheque bounce cases are indeed being compromised or settled by way of compounding, albeit during the later stages of litigation thereby contributing to undue delay in justice delivery. The problem herein is with the tendency of litigants to belatedly choose compounding as a means to resolve their dispute. …....*

***19.** As mentioned earlier, the learned Attorney General's submission is that in the absence of statutory guidance, parties are choosing compounding as a method of last resort instead of opting for it as soon as the Magistrates take cognizance of the complaints. One explanation for such behaviour could be that the accused persons are willing to take the chance of progressing through the various stages of litigation and then choose the route of settlement only when no other route remains. While such behaviour may be viewed as rational from the viewpoint of litigants, the hard facts are that the undue delay in opting for compounding contributes to the arrears pending before the courts at various levels. If the accused is willing to settle or compromise by way of compounding of the offence at a later stage of litigation, it is generally indicative of some merit in the complainant's case. In such cases it would be desirable if parties choose compounding during the earlier stages of litigation. If however, the accused has a valid defence such as a mistake, forgery or coercion among other grounds, then the matter can be litigated through the specified forums."*

It is deducible from the Apex Court decision that the submission made by the counsel is not without substance.

As requested by the counsel, it is directed that the accused may appear before the court below within a period of one month from today through the representing counsel and move an application seeking compounding of offence through compromise. On such application being moved the concerned court may take adequate steps in accordance with law in this regard and shall provide further opportunity to the accused which shall not exceed a maximum period of four months from today to make an endeavour in this direction. Thereafter, the court shall pass necessary orders specifically keeping in view the law laid down by the Apex Court in the case of **Damodar S. Prabhu (supra)** within a period of five months from today.

If the decision of the Court given in the light of the application does not

conclude the proceedings against the accused and he is further required to appear and face the trial, the court shall be at liberty to proceed in accordance with law against the accused and take all necessary steps and measures to procure his attendance as the law permits.

In the aforesaid period of five months or till the decision given in the light of the application, whichever is earlier, no coercive measures shall be adopted against the accused.

It is made clear that no application for extension of time shall be entertained if this order is not availed by the accused in the stipulated period of time.

It is further clarified that this order has been passed only with regard to the accused on behalf of whom this application u/s 482 Cr.P.C. has been moved in this Court.

With the aforesaid observations this application is disposed off.

Order Date :- 5.8.2016
Naresh