HIGH COURT OF JUDICATURE AT ALLAHABAD

Bench: Subhash Vidyarthi J.

Date of Decision: 04.10.2023

APPLICATION U/S 482 No. - 2592 of 2023

Sri Ashok Kumar Garg ..... Applicant

Versus

Central Bureau Of Investigation ..... Opposite Party

Sections, Acts, Rules, and Article mentioned:

Section 482 of the Code of Criminal Procedure (Cr.P.C.)

Sections 120B, 420, 406 of the Indian Penal Code (IPC)

Subject: Quashing of charges against the applicant based on allegations of giving a false opinion in a criminal conspiracy and related offenses.

Headnotes:

Criminal Conspiracy - Quashing of charges against the applicant - Allegation of giving a false opinion in a criminal conspiracy - Charges under Sections 120B (Criminal Conspiracy), 420 (Cheating), 406 (Criminal Breach of Trust) of the Indian Penal Code (IPC) - Cognizance and summoning order challenged - Lack of Specific Conspiracy Details - Bald and Omnibus Nature of Allegation - No Mention of a Criminal Conspiracy with Named Persons - Insufficient Concrete Evidence of a Criminal Conspiracy - Applicant's Professional Conduct Questioned - Application under Section 482 of the Code of Criminal Procedure (Cr.P.C.) allowed - Cognizance and summoning order quashed by the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench. [Para 1-36]

Referred Cases:

- CBI v. K. Narayana Rao, (2012) 9 SCC 512
- Surendra Nath Pandey v. State of Bihar, (2020) 18 SCC 730
- Alpic Finance Ltd. v. P. Sadasivan, (2001) 3 SCC 513
- K. Ramakrishna v. State of Bihar, (2000) 8 SCC 547
- Soma Chakravarty v. State, (2007) 5 SCC 403
- Akbar Hussain v. State of J&K, (2018) 16 SCC 85
- State of Uttar Pradesh and Another v. Akhil Sharda and Others, 2022 SCC OnLine SC 820
- Kaptan Singh v. State of U.P., (2021) 9 SCC 35
- Google India (P) Ltd. v. Visaka Industries, (2020) 4 SCC 162

Representing Advocates:

For Applicant : Rishad Murtaza, Aishwarya Mishra, Syed Ali Jafar Rizvi

Counsel for Opposite Party : Anurag Kumar Singh

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Hon'ble Subhash Vidyarthi J.

1. Heard Sri Rishad Murtaza, the learned counsel for the applicant, Sri Anurag Kumar Singh, the learned counsel for the CBI and perused the record.

2. By means of the instant application filed under Section 482 Cr.P.C., the applicant has prayed for quashing of the cognizance order and the summoning order dated 27.01.2023 and the entire proceedings of Criminal Case No. 126506 of 2022 arising out of FIR No. RC2(E)/2022/CBI/SCB/Lucknow, under Sections 120B, 420, 406 I.P.C., P.S. CBI/SCB/Lucknow, pending in the Court of the learned Special Judicial Magistrate, CBI (Pollution), Lucknow and to quash the order dated 28.02.2023 whereby non-bailable warrants have been issued against the applicant.

3. On 16.03.2022, a Deputy General Manager of Small Industries Development Bank of India (SIDBI) sent a complaint to the CBI against 10 named persons and some unknown persons, stating that M/s JML Marketing Pvt. Ltd., through its promoter Kimti Lal Arora, had obtained a loan from the Bank by offering collateral security of a property of co-accused persons Rajinder Chawla and Varinder Chawla situate at Ambala Cantt. Being situated in cantonment area, the property could not have been mortgaged, as the guarantors had merely occupancy rights in respect of the property and they did not own the property.

4. On 14.12.2022 the CBI submitted a charge-sheet against 8 persons, including the applicant, inter alia stating that prior to creation of mortgage, a title investigation report in respect of the property was obtained from the applicant, who was the bank's approved valuer. The applicant had submitted a title report dated 17.01.2015 stating that the property fell under the Municipal Corporation of Ambala and the names of the owners were shown in the records of the Municipal Corporation. The applicant had certified that the title of the property was valid, clear and marketable.

5. The charge-sheet further states that the bank had obtained another report from another approved valuer Ramesh Grover of M/s Grover Architects, who had submitted a valuation report dated 12.01.2015 assessing market value of the property as Rs. 11.20 Crores. The bank's guidelines mandate that in case the value of the property exceeds Rs.3 Crores, another valuation should be obtained and another yet approved valuer Jitendra Sharma, a partner of M/s Sharma and Associates, had given a report dated 20.01.2015 opining the valuation of the property to be Rs. 11.82 Crores.

6. On 08.10.2019 the account was declared as NPA, and thereafter the bank obtained another report from its valuer Dr. Samir K. Monga, who opined on 28.11.2019 that the value of the property was nil as only occupancy rights are transferred in cantonment area and ownership of the property is not transferred. However, yet another valuer Sri H. P. Mittal has assessed the market value of the property as Rs. 5.29 Crores on 10.09.2020. The charge-sheet mentions that subsequently the mortgagors had transferred the mortgaged building in favour of their wives, but that allegation does not relate to the applicant.

7. The charge-sheet alleges that the applicant had given a clean chit in respect of the borrower's right over the land in question pursuant to a criminal conspiracy.

8. The learned counsel for the applicant Sri Rishad Murtaza has submitted that the property in question had been acquired by the co-accused / guarantors through a sale deed in the year 1982. The loan in question was taken by the co-accused / borrowers in the year 2015. The applicant had submitted his report on the basis of the documents provided to him, after exercise of due diligence. When the bank's other approved valuers also differed in assessing the value of the property, it cannot be assumed that at the time of making the mortgage the applicant had given a wrong report regarding the value of the property with a criminal intent.

9. Sri. Rishad Murtaza has next submitted that there is no allegation that the applicant had any intention to cheat the Bank or that he was benefitted by commission of the offence and, therefore, the offence of cheating is not made out against the applicant. The applicant was not entrusted with any dominion over any property, nor has he misappropriated or converted the same to his own use and, therefore, the offence of criminal misappropriation is also not made out. He has also submitted that there is nothing on record which may make out the commission of the offence of criminal conspiracy.

10. In support of his submissions, Sri Murtaza has placed reliance on the judgments in the cases of Central Bureau of Investigation v. K. Narayan Rao, 2012 (9) SCC 512, Surendra Nath Pandey versus State of Bihar, (2020) 18 SCC 730 and Alpic Finance Ltd. versus P Sadasivan, (2001) 3 SCC 513.

11. Per contra, Sri. Anurag Kumar Singh, the learned Counsel for the respondent – C.B.I. has submitted that vide letter dated 20.07.2017, the Estate Officer & Executive Officer, Municipal Council, Ambala has clarified in the matter of Nandini Gupta that registration of only superstructure / malba (debris) can be done as the ownership of the property lies with the Government of Haryana. Vide letter dated 14.10.2020, the S.D.M. has clarified in the matter of Ankit Arora that registration of superstructure / malba (debris) can be done as the ownership of the property lies with the Government of India.

12. Sri. Singh has relied upon the judgments in the cases of K. Ramakrishna v. State of Bihar, (2000) 8 SCC 547, Soma Chakravarty v. State, (2007) 5 SCC 403, Akbar Hussain v. State of J&K, (2018) 16 SCC 85, State of Uttar Pradesh and Another Versus Akhil Sharda and Others, 2022 SCC OnLine SC 820 and Kaptan Singh v. State of U.P., (2021) 9 SCC 35.

13. In CBI v. K. Narayana Rao, (2012) 9 SCC 512, the respondent Advocate was charged for giving false legal opinion in respect of 10 housing loans. The High Court had quashed the charge sheet exercising the power under Section 482 Cr.P.C. In appeal, the Hon'ble Supreme Court held that: -

"30. Therefore, the liability against an opining advocate arises only when the lawyer was an active participant in a plan to defraud the Bank. In the given case, there is no evidence to prove that A-6 was abetting or aiding the original conspirators.

31. However, it is beyond doubt that a lawyer owes an "unremitting loyalty" to the interests of the client and it is the lawyer's responsibility to act in a manner that would best advance the interest of the client. Merely because his opinion

may not be acceptable, he cannot be mulcted with the criminal prosecution, particularly, in the absence of tangible evidence that he associated with other conspirators. At the most, he may be liable for gross negligence or professional misconduct if it is established by acceptable evidence and cannot be charged for the offence under Sections 420 and 109 IPC along with other conspirators without proper and acceptable link between them. It is further made clear that if there is a link or evidence to connect him with the other conspirators for causing loss to the institution, undoubtedly, the prosecuting authorities are entitled to proceed under criminal prosecution. Such tangible materials are lacking in the case of the respondent herein."

(Emphasis supplied)

14. In Surendra Nath Pandey v. State of Bihar, (2020) 18 SCC 730, following the judgment in the case of K. Narayana Rao (Supra), the Hon'ble Supreme Court held that: -

"4. Taking into account the contents of FIR, we are left with the impression that the said allegations are bald and omnibus and do not make any specific reference to the role of the appellants in any alleged conspiracy. In CBI v. K. Narayana Rao to which one of us (Ranjan Gogoi, J.) was a party, it has been held by this Court that a criminal prosecution on the basis of such bald and omnibus statement/allegations against the panel advocates of the Bank ought not to be allowed to proceed as the same constitute an abuse of the process of the court and such prosecution may in all likelihood be abortive and futile."

15. In Alpic Finance Ltd. v. P. Sadasivan, (2001) 3 SCC 513, the Hon'ble Supreme Court held that "To deceive is to induce a man to believe that a thing is true which is false and which the person practising the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence."

16. In the present case, the charge-sheet alleges the applicant's involvement in a criminal conspiracy for commission of the offences of cheating and criminal breach of trust and there is no allegation of commission of the offences of cheating and criminal breach of trust by the applicant himself. Therefore, Alpic Finance Ltd. (Supra) has no relevance for decision of the present application.

17. All the judgments cited by the learned Counsel for the respondent – C.B.I. are on the point of scope of interference under Section 482 Cr.P.C., which reads as follows: -

"482. Saving of inherent powers of High Court.— 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."

18. In State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335, the Hon'ble Supreme Court discussed several precedents on the scope of Section 482 Cr.P.C. and extracted the following principles: -

"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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

19. In K. Ramakrishna v. State of Bihar, (2000) 8 SCC 547, it was held that: -

"4. The trial court under Section 239 and the High Court under Section 482 of the Code of Criminal Procedure is not called upon to embark upon an inquiry as to whether evidence in question is reliable or not or evidence relied upon is sufficient to proceed further or not. However, if upon the admitted facts and the documents relied upon by the complainant or the prosecution and without

weighing or sifting of evidence, no case is made out, the criminal proceedings instituted against the accused are required to be dropped or quashed…"

20. In Soma Chakravarty v. State, (2007) 5 SCC 403, the Hon'ble Supreme Court held that: -

"if on the basis of material on record the court could form an opinion that the accused might have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial."

21. In Akbar Hussain versus State of J&K, (2018) 16 SCC 85, the Hon'ble Supreme Court held that: -

"5. ... At the time of framing the charge, the trial court has to consider the material before it by the investigating officer and form a prima facie opinion thereupon as to whether it is a fit case for framing of charge under a particular provision. The standard of proof test, which is to be applied at the final stage, in order to find out as to whether the accused is guilty or not on the basis of actual evidence produced is not to be applied at the stage of framing of the charge. Charge can be framed even when there is a strong suspicion founded upon materials before the Court, which leads the court to form a presumptive opinion as to existence of the factual ingredient constituting the offence alleged."

22. In State of Uttar Pradesh and Another VersusAkhil Sharda and Others, 2022 SCC OnLine SC 820, the Hon'ble Supreme Court held that "no mini trial can be conducted by the High Court in exercise of powers under Section 482 Cr.P.C. jurisdiction and at the stage of deciding the application under Section 482 Cr.P.C., the High Court cannot get into appreciation of evidence of the particular case being considered."

23. In Kaptan Singh v. State of U.P., (2021) 9 SCC 35, it was held that :

"exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 Cr.P.C. though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in the section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 CrPC."

24. In Google India (P) Ltd. v. Visaka Industries, (2020) 4 SCC 162, the Hon'ble Supreme Court explained the expression 'rarest of rare cases' occurring in Bhajan Lal (Supra) thus: -

"43. As to what is the scope of the expression "rarest of rare cases" indicated in para 103, we may only refer to the judgment of this Court in Jeffrey J. Diermeier v. State of W.B. (2010) 6 SCC 243, wherein the law laid down by a

Bench of three Judges in Som Mittal (2) v. State of Karnataka (2008) 3 SCC 574 has been referred to :

“23. The purport of the expression “rarest of rare cases”, to which reference was made by Shri Venugopal, has been explained recently in Som Mittal (2) v. State of Karnataka. Speaking for a Bench of three Judges, the Hon’ble the Chief Justice said :

‘9. When the words “rarest of rare cases” are used after the words “sparingly and with circumspection” while describing the scope of Section 482, those words merely emphasise and reiterate what is intended to be conveyed by the words “sparingly and with circumspection”. They mean that the power under Section 482 to quash proceedings should not be used mechanically or routinely, but with care and caution, only when a clear case for quashing is made out and failure to interfere would lead to a miscarriage of justice. The expression “rarest of rare cases” is not used in the sense in which it is used with reference to punishment for offences under Section 302 IPC, but to emphasise that the power under Section 482 CrPC to quash the FIR or criminal proceedings should be used sparingly and with circumspection.”

(Emphasis in original)

25. When the facts of the case are scrutinized in light of the law laid down by the Hon’ble Supreme Court in the above mentioned cases, it appears that the only allegation against the applicant is that he had submitted a title report dated 17.01.2015 stating that the title of the property mortgaged was valid, clear and marketable. The charge-sheet further states that prior to it, the bank had obtained a report dated 12.01.2015 from Ramesh Grover, who had assessed the market value of the property as Rs. 11.20 Crores and one Jitendra Sharma had given a report dated 20.01.2015 opining the valuation of the property to be Rs. 11.82 Crores.

26. It is relevant to note that Ramesh Grover and Jitendra Sharma, who had given reports to the Bank regarding value of the property to be Rs.11.20 Crores and Rs.11.82 Crores respectively, have not been made accused in the present case.

27. Even after the account was declared as NPA, the Bank’s valuer Sri H. P. Mittal has assessed the market value of the property as Rs. 5.29 Crores as on 10.09.2020 and he too has not been made an accused.

28. The charge-sheet alleges that the applicant had given a clean chit to the borrower’s right over the land in question pursuant to a criminal conspiracy. The borrower was M/s JML Marketing Pvt. Ltd., through its directors Kimti Lal Arora and Anil Arora. The property in question belonged to the mortgagors Rajinder Kumar Chawla and Varinder Kumar Chawla and not to the borrowers, and the charge-sheet wrongly mentions that the applicant had given a clean chit to the borrower’s right over the land in question. It indicates that the applicant has been implicated in the charge-sheet in a mechanical manner, without due application of mind to facts of the case.

29. Although the charge-sheet alleges that the applicant had given a clean chit to the borrower’s right over the land in question pursuant to a criminal conspiracy, no further particulars have been stated regarding the alleged criminal conspiracy and the persons with whom the applicant was involved in the conspiracy.

30. Section 120-A defines criminal conspiracy which reads thus: -

“120-A. Definition of criminal conspiracy.—When two or more persons agree to do, or cause to be done—

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.”

31. In CBI v. K. Narayana Rao (Supra), while dealing with a case involving similar facts, the Hon’ble Supreme Court explained the ingredients of Criminal Conspiracy thus: -

“Section 120-B speaks about punishment of criminal conspiracy. While considering the definition of criminal conspiracy, it is relevant to refer Sections 34 and 35 IPC which are as under:

“34. Acts done by several persons in furtherance of common intention.—When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

35. When such an act is criminal by reason of its being done with a criminal knowledge or intention.—Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.”

24. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words,an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence.

(Emphasis supplied)

32. The property in question had been acquired by the co-accused / guarantors through a sale deed in the year 1982. The loan in question was taken by the co-accused / borrowers in the year 2015. The applicant had

submitted his report on the basis of the documents provided to him. Two other valuers approved by the bank had also submitted valuation reports and those two valuers have not been arrayed as accused persons. There is no specific allegation that the applicant had given the professional opinion in pursuance of an agreement made with any other specified accused.

33. The only material relied upon by the respondent – CBI in the counter affidavit are the letter dated 20.07.2017 issued by the Estate Officer & Executive Officer, Municipal Council, Ambala in the matter of one Nandini Gupta stating that registration of only superstructure / malba (debris) can be done as the ownership of the property lies with the Government of Haryana, and another letter dated 14.10.2020 issued by the S.D.M. in the matter of one Ankit Arora stating that registration of superstructure / malba (debris) can be done as the ownership of the property lies with the Government of India. Both the aforesaid letters were issued in the matters of two specific persons unconnected with the present matter and letters those were not in existence when the applicant had given his report on 17.01.2015. The applicant had no occasion to take into consideration the opinion of the aforesaid two authorities.

34. Even in the letters dated 20.07.2017 issued by the Estate Officer & Executive Officer, Municipal Council, Ambala and the letter dated 14.10.2020 issued by the S.D.M., there is a gross conflict of opinion as the former claims that the property in cantonment vests in the Government of Haryana whereas the latter claims that the same vests in the Government of India.

35. In the aforesaid circumstances, the allegation of the applicant having entered into a criminal conspiracy with unspecified persons and having deliberately given a wrong opinion in furtherance of the criminal conspiracy, appears to be bald and omnibus in character and it does not make out a case for trial of the applicant, who is a practicing Advocate aged about 71 years, for commission of the offence of criminal conspiracy. The proceeding for his trial would result in an abuse of the process of law and it would not serve the ends of justice.

36. Accordingly, the application under Section 482 Cr.P.C. filed by the applicant is allowed. The impugned cognizance and summoning order dated 27.01.2023 passed by learned Special Judicial Magistrate, CBI (Pollution), Lucknow in Criminal Case No. 126506 of 2022, arising out of FIR No. RC2(E)/2022/CBI/SCB/Lucknow, and the entire proceedings of the aforesaid case, so far as the same relate to the applicant, are hereby quashed.