

HIGH COURT OF ALLAHABAD**Bench: Justice Shamim Ahmed****Date of Decision: 31st May 2024**

Case No.:

APPLICATION U/S 482 No. - 2705 of 2019

APPLICANT(S): Vivek Singh @ Monu and Another**VERSUS****RESPONDENT(S): State of U.P. and Another****Legislation:**

Sections 304, 34, 149 of the Indian Penal Code (IPC)

Section 3 of the Prevention of Damage to Public Property Act

Section 161 of the Code of Criminal Procedure (Cr.P.C.)

Subject: Application seeking quashing of summoning and cognizance orders dated 30.03.2016, consequential orders dated 11.01.2018 and 11.07.2018, charge sheet dated 13.07.2015, and the entire proceedings in Criminal Case No. 16768 of 2016 arising from Case Crime No. 224 of 2014 under Section 304 IPC and Section 3 of Prevention of Damage to Public Property Act.

Headnotes:

Criminal Law – Summoning and Cognizance Orders – Quashing of summoning and cognizance orders along with consequential orders due to lack of application of judicial mind and procedural irregularities – No evidence indicating the applicants intended to cause death or had knowledge their actions would result in death – Demolition leading to accidental death does not meet criteria for culpable homicide [Paras 1-20, 23-26].

Criminal Procedure – Section 482 Cr.P.C. – Exercise of inherent powers to prevent abuse of process and secure ends of justice – Applicants wrongfully implicated without substantial evidence – Police presence during incident with no preventive measures taken [Paras 27-38].

Legal Principles – Application of Mind – Magistrate’s duty to apply judicial mind and provide reasons in orders – Summoning orders without detailed reasoning or assessment of prima facie case liable to be quashed – Emphasis on careful scrutiny of allegations and evidence before issuing summons [Paras 29-33].

Decision – Application Allowed – Summoning and cognizance orders dated 30.03.2016, orders dated 11.01.2018 and 11.07.2018, and charge sheet dated 13.07.2015 quashed – Entire proceedings in Criminal Case No. 16768 of 2016 set aside – Directions for trial court compliance [Paras 37-41].

Referred Cases:

- Inder Mohan Goswami v. State of Uttaranchal (2007) 12 SCC 1
- Lalankumar Singh and Others v. State of Maharashtra 2022 SCC Online SC 1383
- Pepsi Foods Ltd. v. Judicial Magistrate (1998) 5 SCC 749
- Mehmood UL Rehman v. Khazir Mohammad Tunda and Others (2015) 12 SCC 420
- Mahendra Singh Dhoni v. Yerraguntla Shyamsundar (2017) 7 SCC 760
- State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335
- R.P. Kapoor v. State of Punjab AIR 1960 SC 866
- State of Bihar v. P.P. Sharma 1992 SCC (Cri.)192
- Zandu Pharmaceutical Works Ltd. v. Mohd. Saraful Haq (2005) SCC (Cri.) 283
- Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra AIR 2021 SC 1918
- S.W. Palankattkar & others v. State of Bihar 2002 (44) ACC 168

Representing Advocates:

For Applicant: Ishan Baghel, Mohd. Khalid

For Respondent: Govt. Advocate

JUDGEMENT:

Hon'ble Shamim Ahmed,J.

1. Heard Shri Ishan Baghel, learned Counsel for the applicants, Shri Ashok Kumar Singh, learned A.G.A-I for the State-opposite party No.1.

2. As per the office report dated 12.01.2022 notice upon opposite party No.2 has been served personally but till date neither any counter affidavit has been filed nor any counsel is present today to represent opposite party No.2, the case was taken up in the revised call for final arguments.

3. The present application under Section 482 Cr.P.C. has been filed on behalf of the applicants, namely-Vivek Singh @ Monu and Mohd. Danish @ Mohd. Danish Azad seeking quashing of the impugned summoning and cognizance order dated 30.03.2016 and consequential orders dated 11.01.2018 and 11.07.2018 passed by learned Chief Judicial Magistrate, Lucknow and charge sheet dated 13.07.2015 and the entire proceeding in Criminal Case No.16768

of 2016; State vs. Prabhat Agarwal & Others arising out of Case Crime No.224 of 2014 under Section 304 I.P.C. and Section 3 of Prevention of Damage of Public Property Act pending before learned trial court.

4. Learned Counsel for the applicants submitted that in the present case an FIR dated 02.12.2014 was lodged by Constable Govind Narain, P.S. Naka Hindola, Lucknow against Prabhat Agawal and 5-6 unknown persons under section 304 IPC and 3 of Prevention of Damage to Public Property Act and in the FIR it has been alleged that on 02.12.2014 at around 02:00 PM, the complainant alongwith another constable were present on the place of occurrence wherein one Prabhat Agarwal alongwith 5 to 6 other persons were demolishing a boundary wall of the Old Employment Office, Charbagh. It is also alleged in the FIR that a peepal tree was standing on the foundation of the said boundary wall, which consequently fell over a passerby namely Harinand Jaiswal S/o Late Satya Narain, who alongwith his wife was passing from the place of occurrence, got injured and was taken to Balrampur Hospital, where he died.

5. Learned Counsel for the applicants further submitted that the post-mortem of the deceased Harinand Jaiswal was done on 03.12.2014 at KGMU, Lucknow in which cause of death was shown due to ante-mortem head injury and apart from the deceased Harinand Jaiswal no other person including her wife who was going with him, has sustained any single injury due to the alleged incident as mentioned in the FIR.

6. Learned Counsel for the applicants further submitted that the applicants are not named in the FIR. However, in order to falsely implicate the applicants they were arrayed as an accused, upon the statement under Section 161 Cr.P.C. dated 23.01.2015 of the daughter of the deceased namely Renu Jaiswal but as per the FIR, only the wife of the deceased namely Rani Jaiswal was going alongwith her husband at the place of occurrence and therefore, she is said to be an eye-witness of the incident and the wife of the deceased in her statement under 161 Cr.P.C. dated 22.12.2014, did not mention names of the applicants as an accused. However, for the first time she mentioned the name of her daughter Renu Jaiswal stating that she was also going with them on the date of occurrence i.e. on 02.12.2014 only with the intention to give gravity to the offence and falsely implicate the applicants.

7. Learned Counsel for the applicants further submitted that as per the FIR Renu Jaiswal is not the eye-witness to the aforesaid incident and the

statement of Renu Jaiswal being taken after one month of the alleged incident and that too after the statement of her mother shows that names of the applicants have been dragged into the case with an afterthought and in order to falsely implicate the applicants.

8. Learned Counsel for the applicants further submitted that the story set up by the police in the FIR cannot be believed inasmuch as it does not appeal to reason and when the police personnel saw some illegal activity i.e. demolition of the wall done by the accused, as is mentioned in the FIR, no preventive measures have been taken against them, and notwithstanding, the accused persons have committed the alleged incident mentioned in the FIR the police personnel remained there as spectators.

9. Learned Counsel for the applicant further submitted that the applicants were not named as an accused in the aforesaid FIR and for the very first time the applicants got the knowledge of their implication in the aforementioned crime as an accused, when the police personnel have approached their native place in pursuance of Non-Bailable Warrant and proceeding U/s 83 Cr.P.C. initiated by Learned Chief Judicial Magistrate, Lucknow.

10. Learned Counsel for the applicants further submitted that the applicants on the information of aforementioned case, inquired about the case through counsel and got to know that their names have been dragged in the case after one month of the registration of the FIR, moreover, the summons were also been issued on some wrong addresses. He further submitted that Non-bailable warrant and proceeding under section 83 Cr.P.C. have been initiated against the applicants, the applicants for the first time came to know about the present case when the police personnel visited their native place for their arrest.

11. Learned Counsel for the applicants further submitted that the named accused in the FIR namely Prabht Agarwal has already been granted bail by the Coordinate Bench of this Court vide order dated 12.12.2018 passed in Criminal Misc. Case No. 7177 (B) of 2018 (Prabhat Agarwal versus State of U.P.).

12. Learned Counsel for the applicants further submitted that the bare perusal of FIR will show that the applicants have not committed any crime and no offence under section 304 IPC and Section 3 of Prevention of Damage to Public Property Act is made out against them nor any ingredients of the above sections are attracted in the case of the present applicants.

13. Learned Counsel for the applicants further submits that the perusal of the FIR would show that the FIR was lodged against the Prabhat Agarwal and 5-6 unknown persons, however, neither the FIR was lodged under section 34 or 149 IPC nor the Investigating Officer has filed the chargesheet under section 34 or 149 IPC, which shows that applicants have been falsely implicated as an accused due to enmity and rivalry.

14. Learned Counsel for the applicants further submitted that on inquiring the background of the alleged FIR the applicants have learnt from the sources that there was a Civil Suit going between one Raja Gopal Singh S/o Late Kunwar Jagdish Singh, who is owner and in possession of the land bearing Khasra No. 579 and 580, Mohalla Charbagh Station, Ganeshganj, Lucknow, of which a Regular Suit No. 1508 of 2014, Gopal Singh versus Vice Chairmand, Lucknow Development Authority & others is pending in the court of Civil Judge (S.D.), Malihabad, Lucknow and upon the land of Khasra No. 579, plot no. 64/C-1 which is ancestral property of Raja Gopal Singh, the illegal Auto and Tempo stand is made with collusion of police persons and strangers and illegal recovery is made from them and upon objection of co-accused Prabhat Agarwal, the police on duty warned for dire consequences to the co-accused Prabhat Agarwal and to send him behind the bars in forged cases. The co-accused Prabhat Agarwal made several applications through registered posts to the higher authority for lodging the FIR against the police and strangers but no action was taken on the said applications.

15. Leaned Counsel for the applicants further submitted that prior to the lodging of the FIR on dated 22.11.2014 the police of Police Station Naka Hindola, Lucknow stopped the work of cleaning of the plot in question, therefore, the co-accused Prabhat Agarwal made an application dated 22.11.2014 to the City Magistrate, Lucknow but no heed was paid on the said application by the concerned authorities.

16. Learned Counsel for the applicants further submitted that if the statement of the deceased's daughter is taken to be true, it is hard to believe that she is a resident of Kushinagar and there cannot be any acquaintance with the applicants to name them as an accused of the alleged incident and as per the version of the FIR, the wife of the deceased was the eye witness and no one else was accompanying them at the time of alleged incident, thus, the story of the prosecution fails on this ground also.

17. Learned Counsel for the applicants further submitted that in the aforesaid case chargesheet has been filed against the applicants and one Mr. Prabhat Agarwal, however, the applicants have no concern with the co-accused namely Prabhat Agarwal nor they knew him personally, the applicant No.1 was a Research Scholar of Lucknow University and pursuing Ph.D. from there, while, applicant No. 2 was a student. The charge sheet was filed against the applicants totally ignoring the evidence on record and the same was filed in a mechanical manner.

18. Learned Counsel for the applicants further submitted that the learned Chief Judicial Magistrate, Lucknow has passed the cognizance and summoning order dated 30.03.2016 against the applicants without application of judicial mind and in a most mechanical and routine manner, thus, in light of the facts and circumstances of the case, the impugned order dated 30.03.2016, order dated 11.01.2018 & 11.07.2018 and charge sheet dated 13.07.2015 and the entire proceeding of the Criminal case No. 16768 of 2016, pending in the Court of Learned Chief Judicial Magistrate, Lucknow, is liable to be quashed and the present application may be allowed as prima facie no case is made out against the applicants.

19. Shri Ashok Kumar Singh, learned A.G.A-I for the State-opposite party No.1 has opposed the argument advanced by learned Counsel for the applicants and submitted that the summoning order dated 30.03.2016 and consequential orders dated 11.01.2018 and 11.07.2018 are rightly passed as prima facie offence is made out against the applicants and the trial court has rightly passed impugned summoning order as well as the consequential orders after considering the material placed on record, thus, the applicants are not entitled for any relief by this Court and the present application may be rejected.

20. After considering the arguments advanced by learned counsel for the applicant and learned A.G.A-I for the State-opposite party No.1 and after perusal of the record, materials and arguments presented, this Court finds that the summoning order dated 30.03.2016 and consequential orders dated 11.01.2018 and 11.07.2018, lacks necessary legal and factual foundation. There appears force in the argument of learned Counsel for the applicants that Rani Jaiwal, wife of the deceased, who was accompanying the deceased at the time of the alleged incident, has not taken the names of the applicants in her statement under Section 161 Cr.P.C. dated 22.12.2014. The applicants have reliably learnt that a Regular Suit No.1508 of 2014 (Gopal Singh vs. Vice

Chairman, Lucknow Development Authority and others) is pending in the Court of Civil Judge, Senior Division, Malihabad, Lucknow. The disputed land is upon Khasra No. 579, Plot No. 64/C-1 which is an ancestral property of Raja Gopal Singh and an illegal auto and tempo stand is made in collusion with the police is being run on that land and illegal recovery is made by the police along with other persons. The name of the applicants have been dragged in after one month of the incident in the statement of the daughter of the deceased, while the daughter of the deceased is not the eye-witness of the alleged incident nor she was accompanying the deceased and resides in a different town i.e. Kushinagar, Uttar Pradesh.

21. Further, the applicants contend that the incident in question, involving the demolition of a wall which led to a tree falling and subsequently causing the death of an individual, should be classified as an accident and not as culpable homicide amounting to murder.

22. Further, it is relevant to discuss Section 299 of the I.P.C. which defines the term 'culpable homicide' in the following manner:-

"Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Explanation 1.--

A person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.--

Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.--

The causing of the death of child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

'Culpable homicide' according to section 299, I.P.C. has the following ingredients:

1. Causing of death of a human being;
2. Such death must have been caused by doing an act;
3. The act must have been done:
 - (i) with the intention of causing death;
 - (ii) with the intention of causing such bodily injury as is likely to cause death;
or
 - (iii) with the knowledge that the doer is likely by such act to cause death."

23. It is further observed here that Section 304 IPC deals with culpable homicide not amounting to murder, which requires either the intention to cause death or knowledge that the act is likely to cause death. For a conviction under this section, it must be established that the accused had either of these mental states. Section 304 I.P.C. read as under:-

"Section 304 Indian Penal Code, 1860

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

Or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

24. Thus, upon reviewing the facts and circumstances of the present case, the following points are considered:-

- (i) There is no evidence indicating that the applicants intended to cause death or had knowledge that their actions were likely to result in death. The demolition of a wall, does not inherently suggest an intention or knowledge of causing death.

Foreseeability: The falling of the tree was an unforeseen consequence of the demolition. There is no indication that the applicants could have reasonably

anticipated this specific outcome. In fact, they were not present on the spot at the time of the alleged incident.

(ii) The sequence of events leading to the death appears to be accidental. The demolition work was conducted without any apparent negligence directly linked to the fatal outcome. Accidents, by their nature, are unforeseen and unintentional.

(iii) Given the absence of intention or knowledge to cause death, and considering the unforeseeable and accidental nature of the incident, it is determined that the incident qualifies as an accident. The criteria for culpable homicide under Section 304 IPC are not met.

25. After a thorough examination of the facts and circumstances presented in the petition, the following conclusions are drawn:

(i) Absence of Direct Involvement and Malafide Intent:

(a) The applicants were not named in the original FIR dated 02.12.2014, which was lodged by Constable Govind Narain against Prabhat Agarwal and 5-6 unknown individuals. The FIR does not implicate the applicants directly. Their names surfaced subsequently through a statement made by the deceased's daughter, Renu Jaiswal, on 23.01.2015, which was recorded nearly after a month of the incident. This delay and the circumstances surrounding her statement raise questions about the credibility and timing of their implication and it is also observed here that in the original version of the FIR it has been alleged that the deceased was only accompanied by his wife no one else was with him at the time of alleged incident, even though, she was not the eye witness of the alleged incident.

(b) The primary eyewitness, Rani Jaiswal (wife of the deceased), in her statement under Section 161 Cr.P.C. dated 22.12.2014, did not mention the name of the applicants as being involved in the incident. It was only later that her daughter Renu Jaiswal introduced new names, creating a contradiction. Such contradictions, coupled with the delayed recording of statements, suggest an afterthought rather than a genuine identification of the accused.

(c) For a charge under Section 304 IPC (culpable homicide not amounting to murder), there must be evidence that the accused had the intention or knowledge that their actions were likely to cause death. In this case, there is no evidence to indicate that the applicants had any such intent or knowledge. The demolition of the wall, which resulted in the falling of the peepal tree and

the consequent death of Harinand Jaiswal who was passing the place of alleged incident with his wife, appears to be an unforeseen and unintended consequence.

(d) The incident is best characterized as an accident. The falling of the tree was not a foreseeable outcome of the demolition activity. There is no indication that the applicants could have reasonably anticipated this specific consequence. Accidents, by their nature, are unforeseen and unintentional, and the sequence of events leading to the death of Harinand Jaiswal aligns with this characterization.

(e) The applicants became aware of their implication in the case only after the issuance of non-bailable warrants and proceedings under Section 83 Cr.P.C. initiated by the Learned Chief Judicial Magistrate, Lucknow. The summons were issued to incorrect addresses, causing further procedural irregularities. The applicants' lack of prior knowledge and involvement in the incident, coupled with these anomalies, underscores the necessity of a detailed judicial review, both of them were students and were unaware about the alleged incident.

(ii) Misapplication of Legal Provisions:

(a) The FIR and subsequent chargesheet do not invoke Section 34 (Acts done by several persons in furtherance of common intention) or Section 149 IPC (Every member of unlawful assembly guilty of offense committed in prosecution of common object), which would typically be relevant in cases involving multiple accused. This omission indicates that the prosecution's case lacks the necessary legal foundation to substantiate the applicants' involvement under the claimed sections.

26. Thus, given these considerations, it is clear that the applicants have been wrongfully implicated. The evidence does not support their involvement in any crime under Section 304 IPC or Section 3 of the Prevention of Damage to Public Property Act. The circumstances point towards an accidental death rather than a culpable homicide, and the applicants' names appear to have been added without substantial evidence or just cause.

27. Further, learned Chief Judicial Magistrate, Lucknow has failed to make an enquiry on fact which is mandatory before issuing a summoning order. On this ground alone the proceedings as also the summoning order dated 30.03.2016 as well as the orders dated 11.01.2018 and 11.07.2018 against the applicants appear to be against the settled propositions of law.

28. Further, while passing the summoning order dated 30.03.2016; no reason has been assigned by learned Chief Judicial Magistrate, Lucknow. The said order does not even mention the content of the FIR and nature of allegation and thus, it reflects that learned Chief Judicial Magistrate, Lucknow has not applied its mind while summoning the applicants to face trial and he has failed to enquire even briefly the question as to whether any culpability be imputed to the applicants or other accused persons.

29. Further, the Hon'ble Supreme Court in the case Inder Mohan Goswami v. State of Uttaranchal (2007)12 SCC 1 has been pleased to hold that it would be relevant to keep into mind the scope and ambit of section 482 Cr.PC and circumstances under which the extra ordinary power of the court inherent therein as provisioned in the said section of the Cr.P.C. can be exercised, para 23 is being quoted here under:-

"23. This court in a number of cases has laid down the scope and ambit of courts powers under section 482 Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under section 482 Cr.P.C. can be exercised:

- (i) to give effect to an order under the Code;
- (ii) to prevent abuse of the process of court, and
- (iii) to otherwise secure the ends of justice."

30. Further, the Hon'ble the Supreme Court in the case of Lalankumar Singh and Others vs. State of Maharashtra reported in 2022 SCC Online SC 1383 has specifically held in paragraph No.38 that the order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. Paragraph No.38 of Lalankumar Singh and Others (supra) is being quoted hereunder:-

"38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the

judgment of this Court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation, which reads thus:

"51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

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

53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

31. Further, the Hon'ble Supreme Court in the case of Pepsi Foods Ltd. v. Judicial Magistrate reported in (1998) 5 SCC 749 has been pleased to observe in paragraph No.28, which is reproduced hereinunder:-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and

documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

32. Further, the Hon'ble Supreme Court in the case of Mehmood UL Rehman v. Khazir Mohammad Tunda and Others reported in (2015) 12 SCC 420 has been pleased to observe in paragraph No.20, which is reproduced hereinunder:-

"20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter."

33. Further, the Hon'ble Supreme Court in the case of Mahendra Singh Dhoni v. Yerraguntla Shyamsundar reported in (2017) 7 SCC 760 has been pleased to observe in paragraph No.13, which reads as under:-

13. Before parting with the case, we would like to sound a word of caution that the Magistrates who have been conferred with the power of taking cognizance and issuing summons are required to carefully scrutinize whether the allegations made in the complaint proceeding meet the basic ingredients of the offence; whether the concept of territorial jurisdiction is satisfied; and further whether the accused is really required to be summoned. This has to be treated as the primary judicial responsibility of the court issuing process.

34. Further, Hon'ble the Supreme Court has provided guidelines in case of State of Haryana Vs. Bhajan Lal reported in 1992 Supp (1) SCC 335 for the

exercise of power under Section 482 Cr.P.C. which is extraordinary power and used separately in following conditions:-

"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 F.I.R. 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."

35. Further the Hon'ble Supreme Court has also laid down the guidelines where the criminal proceedings could be interfered and quashed in exercise of its power by the High Court in the following cases:- (i) R.P. Kapoor Vs. State of Punjab, AIR 1960 S.C. 866, (ii) State of Bihar Vs. P.P. Sharma, 1992 SCC

(Cri.)192, (iii) Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.) 283 and (iv) Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra, AIR 2021 SC 1918.

36. In S.W. Palankattkar & others Vs. State of Bihar, 2002 (44) ACC 168, it has been held by the Hon'ble Apex Court that quashing of the criminal proceedings is an exception than a rule. The inherent powers of the High Court itself envisages three circumstances under which the inherent jurisdiction may be exercised:-(i) to give effect an order under the Code, (ii) to prevent abuse of the process of the court ; (iii) to otherwise secure the ends of justice. The power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

37. Thus, in view of the law laid down by the Hon'ble Supreme Court and in light of the observations and discussions made above and keeping in view the facts and circumstances of the case, and from the perusal of the record, the impugned summoning and cognizance order dated 30.03.2016 and consequential orders dated 11.01.2018 and 11.07.2018 passed by learned Chief Judicial Magistrate, Lucknow and charge sheet dated 13.07.2015 and the entire proceeding in Criminal Case No.16768 of 2016; State vs. Prabhat Agarwal & Others, Case Crime No.224 of 2014 under Section 304 I.P.C. and Section 3 of Prevention of Damage to Public Property Act are liable to be quashed as the story set up by the police in the FIR cannot be believed inasmuch as it does not appeal to reason. When the police personnel saw some illegal activity i.e. demolition of wall is done by the accused, no one prevented them, instead it appears that they remained there as spectators and a 20 years old peepal tree would not fall down if an adjacent wall is being demolished. Further, there was no intention on the part of the accused-applicants to cause any danger to anybody and even if it is believed that a tree falls down on the road and one passer by sustains injury(ies), it would be an accident and cannot be a case under Section 304 IPC. and also taking into account the role of the police, allegations in the FIR and the death of the deceased occurred because of falling of peepal tree on the deceased demonstrates that no knowledge can be attributed to the accused that the tree would fall on a particular direction where a passer-by would be passing through the road at that particular time. The police were present when the accused were demolishing the wall. It was incumbent upon them to prevent the accused if there was any illegal activity. From the perusal of the FIR, it

appears that the police did not take any action to prevent demolition of the wall.

38. Further, in the present case learned Chief Judicial Magistrate, Lucknow has failed to apply his judicial mind to the facts of the case and the law applicable thereto while summoning the applicants and issuing Non-bailable warrants, the Chief Judicial Magistrate has not examined the nature of allegations made in the FIR and the evidences both oral and documentary in support thereof.

39. Accordingly, the the impugned summoning and cognizance order dated 30.03.2016 and consequential orders dated 11.01.2018 and 11.07.2018 passed by learned Chief Judicial Magistrate, Lucknow and charge sheet dated 13.07.2015 and the entire proceeding in Criminal Case No.16768 of 2016; State vs. Prabhat Agarwal & Others arising out of Case Crime No.224 of 2014 under Section 304 I.P.C. and Section 3 of Prevention of Damage to Public Property Act pending in the court of Chief Judicial Magistrate, Lucknow are hereby quashed.

40. For the reasons discussed above, the instant application under Section 482 Cr.P.C. filed by the applicants is allowed in respect of the instant applicant, namely-Vivek Singh @ Monu and Mohd. Danish @ Mohd. Danish Azad.

41. Office is directed to transmit a copy of this order to the trial court concerned for its necessary compliance.

42. No order as to cost(s).

© All Rights Reserved @ LAWYER E NEWS

*Disclaimer: Always compare with the original copy of judgment from the official website.