

Cr.P.C. and whether the same can be challenged in appeal under Section 378 (4) Cr.P.C. or is an order revisable under Section 397 Cr.P.C. does not arise in the present case. The said question is the first question in the reference.

12. In so far as the second question challenging the correctness of the judgement of *Vinay Kumar Vs. State of U.P.: Criminal Revision No. 3426 of 2005, decided on 04.09.2007* by a learned Single Judge is concerned, does not have relevance in the present matter since in the said case although the complaint was dismissed in default vide order dated 05.02.2004 passed by the trial court concerned but the same was after the accused therein were summoned for offence under Section 138 of the N.I. Act, under Section 204 Cr.P.C. vide order dated 19.09.2002. The order thus therein was an order under Section 256 Cr.P.C. and not under Section 203 Cr.P.C. The second question thus also does not arise for consideration in the present matter.

13. The reference thus needs no deliberation on the issues in it and does not deserve to be answered.

14. The reference thus in the light of the above discussion is returned back to the appropriate Bench.

15. The matter is directed to be listed before the appropriate Bench having roster in the week commencing 15th April, 2025.

(2025) 4 ILRA 726
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 10.04.2025

BEFORE

THE HON'BLE SHREE PRAKASH SINGH, J.

Application U/S 482 No. 4859 of 2013

Ramesh Kumar Srivastava & Anr.

...Applicants

Versus

State of U.P. & Anr.

...Respondents

Counsel for the Applicant:

Sanjay Kumar Srivastava

Counsel for the Respondents:

G.A.

Criminal Law -Criminal Procedure Code,1973-Section 482-Indian Penal Code,1860-Section 325,506-challenge to-summoning order-The case stemmed from allegations by the complainant that the applicant no. 2, Doctor had conducted a negligent surgery, leading to cancer and later both applicants allegedly attacked her with a motorcycle during her protest-However, the FIR was lodged after a delay of nearly a month, and subsequent departmental inquiry had exonerated the doctor, holding a private hospital responsible-The Court noted the absence of credible eyewitnesses, the lack of corroborating medical evidence, and the verified presence of the applicants elsewhere at the time of the alleged incident-The Court found that the FIR was filed with malafide intent after the complainant failed in earlier attempts to implicate the applicants through departmental channels-Appling principles from *State of Haryana Vs. Bhajan Lal and Prashant Bharti Vs. St. of NCT of Delhi*, the court held that the proceedings were malicious and constituted an abuse of the legal process.(Para 1 to 30)

The application is allowed. (E-6)

List of Cases cited:

1. *St. of Har. Vs Bhajan Lal* (1992) AIR 604

2. Prashant Bharti Vs. St. of NCT of Delhi
(2013) 9 SCC 293

(Delivered by Hon'ble Shree Prakash
Singh, J.)

1. Heard Sri Sanjay Kumar Srivastava, learned counsel for the applicants and Sri Nirmal Kumar Pandey, learned A.G.A. for the State-Respondent.

2. The instant application under section 482 Cr.P.C. has been filed with the prayer to quash the impugned orders dated 19.12.2007 and 22.7.2013 passed by the learned Chief Judicial Magistrate Lucknow in Case No. 17162/2007, State Vs Ramesh Kumar Srivastava and Others, as well as the impugned Chargesheet No. 202/207 dated 18.12.2007 under Section 325 and 506 I.P.C., Case Crime no. 77/2007, Police Station-Kotwali Hazratganj, district-Lucknow.

3. From perusal of the ordersheet, it reveals that the notice was issued to the opposite party no. 2 on 08-10-2013 and an interim protection of permanent nature was also granted in favour of the applicants in the same order. The registry reported on 06-12-2013 while mentioning that as per the report of the Chief Judicial Magistrate, Lucknow dated 18-11-2013, the opposite party no. 2 namely, Smt. Sheela Gupta died on 23-06-2009 while suffering with cancer. The report reveals that the Chief Judicial Magistrate, Lucknow has recorded the statement of the husband of the opposite party no. 2 namely, Yogesh Chandra Gupta, the statement of the Head Constable, Sunil Chandra, has also been recorded regarding the death of opposite party no. 2.

4. This matter is arising out of a police case and the state government has filed it's Counter Affidavit on 07-01-2014.

5. The factual matrix of the case are that the first information report was lodged on 08-02-2007 at 20.10 Hrs. regarding the incident allegedly committed on 15-01-2007. It is narrated that Dr. Rajesh Kumar Srivastava, the applicant no. 2, conducted the operation in a careless and negligent manner at Prathmik Swasthya Kendra, Malihabad, district-Lucknow, whereupon the malignancy was developed in the body of the opposite party no. 2. Further alleged that when the informant/opposite party no. 2 was sitting on 'Dharna' for compensation and was returning from the lavatory, both the applicants hit her with a motorcycle, with an intention to kill her and they also threatened her to quit 'Dharna' or to face dire consequences, as a result whereof, she fell down on her left elbow, whereafter the people lifted her and she went under treatment in K.G.M.U., Lucknow, wherein her left elbow was found fractured and that was plastered for six weeks.

6. Contention of learned counsel for the applicants is that the first information report was lodged by delay of about two months, from the date of the alleged incident and no plausible explanation is given thereof and further in a very hurriedly manner, within 10 days of lodging of the first information report, the Investigating Officer, without collecting sufficient evidence, filed the chargesheet. He submits that the husband of the opposite party no. 2, namely Y.C. Gupta, Ram Gopal Bhurji and two other witnesses, whose statements were recorded, were never seen the incident and they all are allegedly hear the occurrence of incident.

7. He submits that the applicants had no knowledge of lodging of the first information report and filing of the chargesheet and as soon as it came into

their knowledge, they submitted an application for further investigation while appending the enquiry report conducted by Dr. M.K.Gupta, the then Dy. C.M.O., the reply dated 28-07-2006 given by the applicant no. 1 to the notice of the informant, the certificate dated 22-02-2007 given by the Superintendent, Samudayik Swasthya Kendra, the cause list of the High Court, showing several cases of the applicant no. 1 listed in the High Court on 15-01-2007 i.e. the date of the alleged incident, affidavit of Kashi Nath Shukla, Advocate, affidavit of S.K.Ojha, Advocate, affidavit of Raj Kumar Dwivedi, Advocate and affidavit of Farukh, Advocate and on the aforesaid application, the Circle Officer while not satisfying with the investigation conducted by the first Investigating Officer, returned the chargesheet with an order for further investigation, while appointing another investigating officer and enclosed the application given by the applicants for further investigation. He added that the statements of the defence witnesses were also recorded by the later Investigating Officer and the chargesheet has been filed while ignoring the evidences placed by the applicants. Further submitted that the learned trial court concerned without application of mind, has passed the impugned order on 19-12-2007 while summoning the applicants.

8. It is further argued that prior to lodging the first information report, a false complaint was given against the applicant no. 2, namely, Dr. Rajesh Kumar Srivastava to the CMO concerned whereafter, an enquiry was got conducted and the Enquiry Officer submitted the report on 29-08-2006, wherein it was found that there is no evidence, which could prove that Dr. Rajesh Kumar Srivastava had conducted the operation of the opposite party no. 2

and thus, the enquiry against the applicant no. 2 was dropped but the opposite party no. 2 under impression that the applicant no. 1 is the brother of the applicant no. 2 and is a practicing advocate, would do pairavi in the matter, therefore, without any cogent piece of evidence, he has also been hatched in a criminal conspiracy. He submits that once the opposite party no. 2 had failed to extort the applicant no. 2, she coined another false and concocted story against the applicants, so that she could falsely implicate them and the purpose which could not be suffice by making a complaint against the applicant no. 2, could be otherwise gained by lodging the first information report against them.

9. He further submitted that the applicants have taken specific plea that the applicant no. 2 was posted as the then Medical Officer in P.H.C., Malihabad and was on an emergency duty from 14-01-2007 to 15-01-2007 and thereafter, he was on Pulse Polio Duty and the duty period has been certified by the Superintendent of P.H.C., Malihabad and the statement of the Superintendent of P.H.C., Malihabad, has also been recorded in Parcha SCD-I on 25-03-2007. He also submits that the applicant no. 1, could not have been present on the alleged place of incident on 15-01-2007 as he was present at the premises of High Court as he is an advocate and his several cases were fixed for hearing, but, the Investigating Officer, ignoring the statement of four ocular witnesses, namely, Mr. Kashi Nath Shukla, Mr. S.K.Ojha, Mr. Raj Kumar Dwivedi, and Mr. Farukh, Advocate, has also erroneously filed the chargesheet against the applicant no. 1.

10. Adding his argument, he submits that the informant is said to have sustained injuries on her elbow, which according to

her own statement, was caused by falling down and that may be occurred on her own, as had there been any intention of the applicants for hitting the opposite party no. 2 by running over her with a motorcycle, she certainly, would have got more serious injuries, more so, there is no medical report to sustain the allegation of the informant that she was suffering with malignancy.

11. He further submitted that there is specific statement that the victim could not note down the number of the motorcycle, which can be a natural course, but, since, the place, where the alleged incident had occurred, is a public place and there is no eye witness of the same, whereas one of the witness namely, Ram Gopal Bhurji, has stated that informant and her husband told him that the persons riding on the motorcycle were the applicants and as such, he is also not an ocular witness of the incident.

12. Concluding his arguments, he submits that the applicants are the law abiding citizens and they were never involved in any criminal activity as there is no previous criminal antecedent of them. Further submission is that the first information is lodged against the applicants, when the opposite party no. 2 had failed in her malicious and malafide intention to extort money from the applicant no. 2 as her complaint was turned down by the enquiry officer and in such senerio feeling her to be failed in getting the money from the applicant no. 2, the other rigorous mode is adopted by the opposite party no. 2 while lodging the first information report, which is totally malafide and with an intention to harass the applicants. He added that the State has also failed to deny the specific averments made in the application with respect to malafide

criminal proceedings initiated against the applicants. Therefore, submission is that the whole criminal proceedings against the applicants are liable to be quashed.

13. Contradicting the aforesaid contentions of learned counsel for the applicants, learned A.G.A. appearing for the State has submitted that in the first information report, the applicants are named and the investigation has twice been conducted as the chargesheet was filed by the first Investigating Officer and subsequently, an application was submitted by the present applicants before the Circle Officer appending therein the statements of the witnesses and the other documents and thereafter, the matter was directed to be further investigated while appointing another Investigating Officer, who after conducting the thorough enquiry in the matter and while recording the statements of all the witnesses, filed the chargesheet. He next added that there could be no reason otherwise to name the applicants for committing the offence, by the opposite party no. 2. He also submits that the learned trial court while considering all the evidences including the statements of all the witnesses, have issued summons against the applicants and therefore, there is no erroneousness in the summoning order as well as in the chargesheet. Thus, submission is that the instant application filed by the applicants may be dismissed.

14. Having heard learned counsels for the parties and after perusal of the material placed on record, it transpires that initially the complaint dated 25.7.2006 was made by the opposite party no. 2 before the authorities of the health department, whereafter, the Chief Medical Officer, Lucknow appointed Dr. M.K. Gupta, the then Dy. Chief Medical Officer, (J.D.-

Grade) as an enquiry officer and after thorough enquiry, the enquiry report was submitted on 28/29-08-2006 before the Chief Medical Officer, wherein it is concluded that there is no evidence against the applicant no. 2, Dr. Rajesh Kumar Srivastava that he had conducted the operation of the informant, whereas the matter pertains to one 'Isha Hospital' and therefore, the negligence, if any, is of the private hospital namely, 'Isha Hospital' and therefore, the enquiry was closed. It seems that when the enquiry was closed and the opposite party no. 2, had failed to succeed in her purpose, she lodged the first information report on 08-02-2007 while alleging the incident of 15-01-2007, though there is no explanation of the delay, wherein it is alleged that the applicants came at the 'Dharna Place' of the opposite party no. 2 and hit her with the motorcycle, where both the applicants were riders, resulting the opposite party no. 2, fallen down and led a fracture in her hand. In fact having at glance the whole scenario, this is not understandable that for what reason and motive, the applicants would be intended to commit such offence.

15. It is also evident that the place where the incident is said to have occurred, is a public place, but there is no public eye witness of the incident, whereas, one of the witness namely, Ram Gopal Bhurji, who supported the version of the prosecution, is also not an ocular witness of the incident and he on the basis of receiving the information from the husband of the opposite party no. 2, has deposed before the police.

16. Further specific plea has been taken by the applicants that the applicant no. 2 was on an emergency duty, from 14-01-2007 to 15-01-2007 and thereafter, he

was on Pulse Polio Duty, which fact has been certified by the Superintendent, P.H.C., Malihabad and his statement has also been recorded, but, this fact has not been denied anywhere in the Counter Affidavit filed on behalf of the State-respondent. Further, with respect to presence of the applicant no. 1, who is a practicing lawyer of this court since last more than 30 years, having a good reputation, is supported by four other witnesses that the applicant no. 1 was present in the High Court on 15-01-2007 as there were several cases of the applicant no. 1 fixed for hearing, but, this fact seems to be ignored by the Investigating Officer as well as the learned trial court while issuing the summons. Further this fact has also not been denied by the State in its Counter Affidavit.

17. This court is also aware of the settled law that the plea of ali-bi, could be considered at the time of the trial, nevertheless, apparently, once there are four witnesses with respect to applicant no. 1 that on 15-01-2007, he was present in the premises of the High Court, but, the Investigating Officer, did not consider the same while filing the chargesheet against him as it is not only the statement of the applicant no.1/accused, but, that too, is supported by the version of four eye witnesses and their statements were also recorded by the Investigating Officer and therefore, this fact has become more particular and important regarding accusation in the instant matter.

18. As long as the applicant no. 2, who is a prestigious doctor, is concerned, was also present on duty at P.H.C., Malihabad, as the statement recorded by the Investigating Officer of the Superintendent of the P.H.C., Malihabad, as

he was on duty from 14-01-2007 to 15-01-2007 and later on, he was on Pulse Polio Duty and therefore, it is not understandable as to why the Investigating Officer was so adamant to discard the statement of the Superintendent of the P.H.C., Malihabad.

19. This court has also noticed the fact that if the informant would have been struck down by the motorcycle with an intention to kill her, certainly, she could have sustained other injuries apart from the fracture and therefore, if the whole story is channelised, it is conclusive that once the Departmental Enquiry Officer submitted his report after concluding the enquiry and did not find involvement of the applicant no. 2 in the matter and further once the legal notice of the applicant no. 2, was replied by the applicant no. 1, the first information report has been lodged while concocting the false and baseless story against them.

20. Time and again, the scope and ambit of section 482 Cr.P.C. has been agitated and elaborately explained/interpreted by the Hon'ble Apex Court regarding the intervenience for quashing of the criminal proceedings.

21. The celebrating Judgment regarding the exercise of powers under section 482 Cr.P.C. for quashing of the criminal proceedings attended with malafide or malice, is rendered in the case of **State of Haryana Vs Bhajan Lal**, reported in **1992, AIR 604**. The Hon'ble Supreme Court in paragraph no. 102 of the Judgment, has enumerated 7 categories of the cases, where powers under section 482 Cr.P.C.

can be exercised, which are given as follows :-

"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."

22. The Hon'ble Apex Court has concisely framed seven guidelines and particularly, the present case is squarely covered with point no. 7, wherein it has been held that if a criminal proceeding is hit by malafide or malicious or instituted with ulterior motive for hatching an accused in a criminal proceeding due to private or personal grudge, the same cannot be permitted to proceed.

23. In so far as the present case is concerned, it is prima-facie apparent that there being without any cogent reason or

evidence, the opposite party no.2 moved an application to the Chief Medical Officer with the allegation that because of the operation conducted by the applicant no. 2, she had suffered with malignancy, though there is no medical report submitted in support of her complaint and when an enquiry was conducted, it was found that the complaint is false against the applicant no. 2 and thereafter, the first information report has been lodged, while hatching the applicants in a criminal conspiracy for personal grudge.

24. Further one of the prosecution witness, though, he is not an eye witness, on receiving the information, has deposed his testimony, which is also unreliable, as is not supported or corroborated with any evidence and therefore, the facts and circumstances of the present matter is indicative that the first information report has been lodged with a malafide and malicious intention, which is squarely covered with the ratio of the Judgment of the Hon'ble Apex Court in the case of **Bhajan Lal(Supra)**.

25. Hon'ble the Apex Court in the case of **Prashant Bharti Vs State of NCT of Delhi**, reported in **(2013) 9 SCC,293** has held that for coming to a conclusion for quashing of the criminal proceedings under section 482 of the Cr.P.C., the following questions shall be kept in the mind of a Judge.

"1. Whether the material relied upon by the accused is sound, reasonable and indubitable, i.e. material is of sterling and in impeccable quality?

2. Whether the material relied upon by the accused is sufficient to reject and over rule the factual assertions contained in the complaint, i.e. material is

such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusation as false?

3. Whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or that the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

4. Whether proceeding with the trial would result in an abuse, of process of the Court and hence, would not serve the end of Justice?"

26. It is trite law that it would not only be sufficient for the court to look into the averments made in the first information report/complaint alone to find out whether the necessary ingredients to constitute the alleged offence are disclosed, but, the court owes a duty to look into the other attending circumstances emerging from the record of the case over and above the averments and if it is required, the court with due care and caution, would try to read in between the lines. So far as the present case is concerned, the background of the circumstances indicates that the allegations levelled in the first information report, seem to be with a motive to wreaking vengeance and malafide.

27. Accordingly, this court finds that the material, which is relied upon by the applicants/accused persons, is sound and reasonable and the material, which is placed, would persuade a reasonable person to dismiss and condemn the factual basis. Further, even the prosecution has not refuted the specific pleadings and grounds raised for quashing of the criminal proceedings against the applicants in the Counter Affidavit and therefore, this court is of the considered opinion that the trial would result in a gross abuse of process of

the law and would not serve the ends of justice.

28. In view of the aforesaid submissions and discussions, there is sufficient ground for quashing of the impugned summoning order as well as the entire criminal proceedings of the case.

29. Consequently, the whole criminal proceedings including the impugned orders dated 19.12.2007 and 22.7.2013 passed by the learned Chief Judicial Magistrate Lucknow in Case No. 17162/2007, State Vs Ramesh Kumar Srivastava and Others, as well as the impugned Chargesheet No. 202/207 dated 18.12.2007 under Section 325 and 506 I.P.C., Case Crime no. 77/2007, Police Station-Kotwali Hazratganj, district-Lucknow, are hereby quashed.

30. Resultantly, the application under section 482 Cr.P.C. is *allowed*.

31. The registry is directed to send a copy of this order to the trial court concerned, forthwith.

(2025) 4 ILRA 733
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 21.04.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Application U/S 482 No. 8370 of 2024

Danish Khan		...Applicant
	Versus	
State of U.P. & Anr.		...Respondents

Counsel for the Applicant:
 Anuuj Taandon