

15. It is settled law that at the stage of summoning or framing of charge, the accused cannot ordinarily invoke section 91 Cr.P.C. However, the Court being under the obligation to impart justice and to uphold the law, is not debarred from exercising its power, if the interest of justice in a given case is so require, even if the accused may have no right to invoke section 91 and the Court is satisfied that the material available with the investigator, not made part of the charge sheet, has crucial bearing on the issue of summoning or framing of charge, it can always direct the investigator/prosecutor/trial Court to place the same before the Court concerned for proper adjudication of the matter.

16. This Court also feels that when the initial order taking cognizance is bad, therefore, consequential order framing charges against the applicant has to be set aside.

17. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. The aforesaid has been held by the Apex Court in the case of **State of Punjab vs. Davinder Pal Singh Bhullar and others** reported in (2011) 14 SCC 770.

18. Similarly, the Apex Court in the case of **Mangal Prasad Tamoli vs. Narvadeshwar Mishra** reported in (2005) 3 SCC 422, has held that if an order at the initial stage is bad in law, then all further proceedings, consequent thereto, will be non est and have to be necessarily set aside.

19. In view of the above discussion, the impugned order dated 03.12.2022 and consequential order dated 02.03.2022

framing charges against the applicant, cannot be legally sustained and are hereby **set aside**. Matter is remitted back to Additional District and Sessions Judge, Fast Track Court, Second, District Hapur for decision afresh. While deciding the matter, he shall pass a reasoned and speaking order, keeping in mind the relevant provisions of Section 91 of Cr.P.C. and the observation made by this Court, preferably within a period of one month from the date of production of certified copy of this order, if there is no legal impediment.

20. With the aforesaid observation and direction, the application u/s 482 Cr.P.C. is **allowed**.

21. Office is directed to communicate this order to the Court concerned forthwith.

(2023) 4 ILRA 359
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 15.03.2023

BEFORE

THE HON'BLE SHIV SHANKER PRASAD, J.

Application u/s 482 No. 5260 of 2023

Rajesh Kumar Giri ...Applicant
Versus
State of U.P. & Ors. ...Opp. Parties

Counsel for the Applicant:
 Sri Dipak Srivastava

Counsel for the Opp. Parties:
 G.A.

A. Criminal Law -Code of Criminal Procedure, 1973-Section 482 - Indian Penal Code, 1860 - Sections 354-A, 504, 506 & 7/8 -The Protection of Children from Sexual offences Act, 2012-Quashing of entire criminal proceedings-

counterblast case-complainant lodge the FIR against the applicant after six years as the applicant filed PIL against the complainant for embezzlement of money when he was village Pradhan-It is impossible that first person harboured enmity with second person for a long period of more than six years-More so, delay in lodging the FIR is not relevant in a case where defamation of a victim who is alleged to be 13 years old is involved-Exercise of power u/s 482 to quash a criminal proceeding is only when an allegation made in FIR or charge-sheet does not constitute ingredients of offence alleged-No mini trial can be conducted by High Court-on the basis of investigation and material collected there appear to be sufficient ground for proceeding against the accused.(Para 1 to 26)

The application is dismissed. (E-6)

List of Cases cited:

1. M/s Eicher Tractor Ltd. & ors. Vs Harihar Singh & anr.(2009) 1 JIC 245 SC
2. St. of Haryana & ors. Vs Bhajan Lal & ors. (1992) Suppl. 1 SCC 335
3. R.P. Kapur Vs St. of Punj. (1960) AIR SC 866
4. St. of Haryana Vs Bhajan Lal (1992) SCC (Cr.) 426
5. St. of Bih. Vs P.P. Sharma (1992) SCC (Cr.) 192
6. Zandu Pharmaceuticals Works Ltd. Vs Md. Saraful Haq & anr. (2005) SCC (Cr.) 283, Para 10
7. Md. Allauddin Khan Vs St. of Bih. & ors. (2019) 0 Supreme SC 454
8. Nallapareddy Sridhar Reddy Vs St. of A.P. & ors. (2020) 0 Supreme SC 45
9. Rajeev Kaurav Vs Balasahab & ors. (2020) 0 Supreme SC 143
10. St. of U.P. Vs Akhil Sharda & ors. (2022) SCC OnLine SC 820

(Delivered by Hon'ble Shiv Shanker Prasad, J.)

1. This application under Section 482 Cr.P.C. has been filed by the applicant with a prayer to quash the charge-sheet no. 40 of 2022 dated 28th September, 2022, cognizance taking order dated 15th November, 2022 as well as entire proceedings of Special Trial No. 1191 of 2022 (State VS. Rajesh Kumar Giri), arising out of Case Crime No. 166 of 2021, under SectionS 354-A, 504, 506 I.P.C. as also under Sections 7/8 POCSO Act, Police Station-Khakheru, District-Fatehpur, pending in the Court of Additional Sessions/Special Judge (POSCO Act), Fatehpur.

2. Heard Mr. Dipak Srivastava, learned counsel for the applicant and the learned A.G.A. for the State.

Case of the Applicant

3. Father of the applicant, namely, Bholi Giri is a farmer and social person in his locality. The complainant was village pradhan of the applicant's village for the period between 2011 to 2015. When the complainant was village pradhan he embezzled public money qua development work of village against which the father of the applicant, namely, Bholi Giri has made complaint against him before the administrative authority of the district. When no action has been taken on the said complaint, Bholi Giri filed a PIL before this Court bearing P.I.L. No. 29962 of 2015 in which this Court has passed order on 21.05.2015 directing Bholi Giri to make an application before the District Magistrate, Fatehpur, who inturn was directed to pass such orders in accordance with law thereon. Pursuant to the above order of this Court

Bholi Giri filed an application before the District Magistrate Fatehpur for its compliance, but no action has been taken due to political power of complainant/opposite party, namely, Dhram Singh Pal. On 29th June, 2015, Bholi Giri preferred an application under Section 156 (3) Cr.P.C before concerned court below qua development work in the village against complainant, who was holding the post of pradhan. The complainant had harboured enmity with applicant' family because he has been defeated in the election of 2015 as Bholi Giri has strongly opposed his candidature as Pradhan and supported his opponent.

4. The Complainant himself went into house of applicant on 08.07.2021 for taking revenge along with his companions, when he did not find any male person, he disrobed the sister of applicant forcefully. Just after knowing such incident with her daughter, applicant's father went to the Police Station on the same day i.e. 8th July, 2021 for lodging the FIR against the complainant and his companions but the Police has not lodged the report. After that, Bholi Giri made an application before the higher Police Officers through registered post on 16th July, 2021, on which again nothing has been done. On one hand the report of Bholi Giri has not been lodged whereas on the other hand under the pressure of present village Pradhan, namely, Lal @ Durga Paswan, the FIR of complainant has been lodged against the applicant i.e. son of Bholi Giri with false and frivolous allegations, as he has concerned with the allegations made in the FIR.

5. Version as unfolded in the FIR is that on 8th July, 2021 at 06:00 p.m. (evening) when the daughter of the

complainant (for short "victim") aged about 13 years was returning her home with buffaloes from the field, then on the way, he caught her hand and started bad talking and molesting her with bad intentions. When she protested he abused her by saying as to why she did not talk with him. When the victim came to her house and disclosed entire incident to the complainant and his wife, he went to the house of the applicant along with his wife, where the applicant also abused and threatened them.

6. Initially the Police has deliberately lodged the FIR in wrong sections of the provisions POCSO Act but on the notice being issued by the Additional District Judge/Special Judge (POCSO Act), Fatehpur, the FIR has been lodged under Sections 7/8 POCSO Act also along with other charging sections.

7. During the course of investigation the statement of first informant is recorded by the investigating officer under section 161 of Cr.P.C, in which he supported the prosecution version as narrated in the first information report. In the statement recorded under Section 161 Cr.P.C. the victim has improved the version as unfolded in the FIR and the statement of the complainant under Section 161 Cr.P.C. by stating that the applicant has beaten her by slaps twice. The victim has also been examined by Doctor, Community Health Centre, Khakharau, District Fatehpur and in his report dated 12th July, 2021, the Doctor has opined that no external injury has been found on the victim. On 18th August, 2021, the statement of the victim has been recorded under Section 164 Cr.P.C. in which he has changed her version. The date of birth of the victim is 1st June, 2008 which has been confirmed by the Principal of School concerned. Since the Police was

continuously harassing the applicant and his family, father of the applicant Bholi Giri made an application 20.01.2022 before the Superintendent of Police and concerned Station House Officer for fair and partial investigation. In this regard Bholi Giri has also preferred Criminal Misc. Writ petition No.2368 of 2022 before this Court which is pending. The Police has deliberately submitted charge-sheet. After being aggrieved from the harassment done by the Police, the applicant has approached this Court for seeking anticipatory bail under Section 41-A by means of Criminal Misc. Anticipatory Bail Application No. 1796 of 2022, which has been disposed by this Court vide order dated 10th March, 2022 by observing that there is no need for anticipatory bail as the applicant cannot be arrested without complying with the provisions of Section 41 and 41-A Cr.P.C. This has refused the prayer of the applicant for grant of anticipatory bail. The concerned police is continuously harassing family of Bholi Giri including the applicant and his female members. When applicant has approached this Court for getting relief, the Investigating officer has deliberately filed the charge-sheet on 28.09.2022 and he has failed to consider the evidence on record. On submission of the charge-sheet, the concerned Magistrate has taken cognizance on 15.11.2022.

8. Submissions advanced on behalf of the applicant

(i) the applicant is preparing for selection in Indian Force. As a counter blast to the complaint as well as public interest litigation filed by the father of the applicant, namely, Bholi Giri and the complainant has been defeated in the election of village Pradhan in the year 2015 due to opposition of Bholi Giri, the present

case has been engineered by the complainant to wreak vengeance, which is not permissible in view of the law laid down by **M/s Eicher Tractor Ltd. and others Vs. Harihar Singh and another**, 2009(1) JIC 245 (SC).

(ii) The applicant has nothing to do with victim as the applicant was not present in the village on 8.7.2021.

(iii) From the perusal of entire prosecution case no offence is made out against the applicant which is narrated in aforesaid FIR and the charges as levelled against the applicant is absolutely incorrect and concocted., as allegations made in the first information report against the applicant are without any substance and no such incident has taken place.

(iv) The applicant is 22 years son of poor farmer and he has no previous criminal History to his credit nor he has convicted by any competent court of law.

(v) There is inordinate delay in lodging the said first information report which creates a serious shadow of doubt on the veracity of first information report.

(vi) The judgment of the Hon'ble Supreme Court in the case of **State of Haryana & Others Vs. Bhajan Lal & Others** reported in 1992 Suppl. (1) SCC 335 has been referred for drawing the attention of the Court to the issue that in sever categories of cases, power under Section 482 Cr.P.C. can be exercised by this Court for quashing the malicious proceedings. The case of the applicant is covered with the seventh category mentioned in the judgment of the Hon'ble Supreme Court in the case of Bhajan Lal (Supra).

Learned counsel for the applicants, therefore, submitted that the present criminal proceedings initiated against the applicants are not only malicious but also

amount to an abuse of the process of the Court.

On the cumulative strength of the aforesaid submissions, it is submitted by learned counsel for the applicants that the proceedings of the above mentioned complaint case are liable to be quashed by this Court.

9. Per contra, learned A.G.A. has submitted that from the perusal of the material on record and looking into the facts of the case at this stage it cannot be said that no offence is made out against the applicants. All the submissions made relate to the disputed questions of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C. He also submits that it is settled law that the evidence produced by the accused in his defence cannot be looked into by the Court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by the Apex Court as well as by this Court in catena of judgments that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding. On the cumulative strength of the aforesaid, learned A.G.A. urges that offence under Sections 354-A, 504, 506 I.P.C. as also under Sections 7/8 POCSO Act is made out against the applicants. The present application under Section 482 Cr.P.C. is devoid of merit and the same is liable to be dismissed by this Court.

10. I have considered the submissions made by the learned counsel for the parties

and have gone through the records of the present application.

11. From the perusal of the entire material available on record, this Court finds that the case set up by the learned counsel for the applicant is that as a counter blast to the complaint and PIL filed by the father of the applicant, namely, Bholi Giri in the year 2015 against the complainant, when he was holding the post of Village Pradhan qua embezzlement of public money being made by him, has no legs to stand on the ground that the present FIR has been lodged by the complainant against the applicant on 9th July, 2021 for the alleged incident dated 8th July, 2021 i.e. after more than six years of the aforesaid complaint and PIL. It is impossible to believe for any common man of this country that a person against whom a complaint was filed by another person and for that reason the first person harboured enmity with second person, will take for a long period of more than six years to take revenge by implicating his son in a false and frivolous case. For example: Person-A will take revenge from Person-B in the year 2021 by implicating his son in a false and frivolous case as Person-B has filed complaint against Person-A in the year 2015. This court respects the decision of the highest court i.e. Hon'ble Supreme Court in the case *M/s. Eicher Tractor (Supra)* relied upon by the learned counsel for the applicant but the said case will not apply in the present case, as this is not the case of counter blast.

12. The submission made by the learned counsel for the applicant that the present proceedings initiated by the complainant/opposite party no.2 against the applicant are malicious proceedings has only been stated to be rejected on the

ground that the reason assigned for the same that in the year 2015 when the complainant was holding the post of Village Pradhan, the father of the applicant, namely, Bholi Giri made complaint against him qua embezzlement of public money before the authorities concerned and also opposed his candidature in the election of village pradhan is too weak. This Court may reiterate again that a person for taking revenge cannot wait seven years by implicating his enemy mala fide in a criminal case. Hence, the judgment of the Apex Court in the case of Bhajan Lal (Supra) relied upon by the learned counsel for the applicant is not applicable in the facts of the present case. No other reasons have been brought on record for establishing his submission that the applicant has been implicated mala fide in the present case by the complainant.

13. This Court also does not accept the case of the applicant that on 8th July, 2021 the applicant has not committed any offence as alleged by the prosecution and on the same date it was the complainant that he entered into the house of the applicant along with his companions where there was no male members of family of the applicant, he molested his sister and also abused her along with his companions as no such complaint has been brought on record along with the present application, which is said to be filed by the father of the applicant before Police Station or before any court of law.

14. Now this Court comes to the submission made by the learned counsel for the applicant that there is a delay in lodging of the first information report implicating the applicant for which there is no plausible explanation.

15. It is no doubt true that for the alleged incident dated 8th July, 2021 at about 06:00 p.m. (evening), the first

information report has been lodged against the applicant on 9th July, 2021 i.e. after 19 hours and 14 minutes from the time of alleged incident. In the opinion of the Court, such delay is not relevant in a case where defamation of a victim who is alleged to be 13 years old is involved. In our country, society has a very big place, where a man or a woman or a family gives importance to the honour of himself/herself/itself. Whenever there is some wrong with a woman or girl or female child, like rape or molestation, most of the master of the family hesitate to lodge report against the accused because of defamation in the society and that is why such delay occurs in lodgment of reports.

16. It is case of such heinous crime where the social ramification of such crimes are very dishonourable to the victim, who suffers social stigma. The offences of this nature which involves social defamation, there is always a general tendency to suppress such events at the initial stage in order to avoid the victim being stigmatized. The offence committed by the applicant is egregious in nature and it speaks about depravity of the applicant's character, who had no moral qualms in violating modesty and honour of a victim.

17. Now this Court comes on the submission made by the learned A.G.A. for the State that all the submissions made relate to the disputed questions of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C.

18. At the pre-trial stage only prima facie case is to be seen in the light of the law laid down by Supreme Court in cases of *R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866*, *State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426*, *State of*

Bihar Vs. P.P.Sharma, 1992 SCC (Cr.) 192 and lastly ***Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283.***

19. The Apex Court in the case of ***Mohd. Allauddin Khan Vs. The State of Bihar & Others*** reported in 2019 0 Supreme (SC) 454, has held that the High Court had no jurisdiction to appreciate the evidence of the proceedings under Section 482 Cr.P.C. because whether there are contradictions or/and inconsistencies in the statements of the witnesses is an essential issue relating to appreciation of evidence and the same can be gone into by the Judicial Magistrate during trial when the entire evidence is adduced by the parties. However, in the present case the said state is yet to come. The relevant paragraph nos. 15 to 17 are being quoted herein below:

"15. The High Court should have seen that when a specific grievance of the appellant in his complaint was that respondent Nos. 2 and 3 have committed the offences punishable under Sections 323, 379 read with Section 34 IPC, then the question to be examined is as to whether there are allegations of commission of these two offences in the complaint or not. In other words, in order to see whether any prima facie case against the accused for taking its cognizable is made out or not, the Court is only required to see the allegations made in the complaint. In the absence of any finding recorded by the High Court on this material question, the impugned order is legally unsustainable.

16. The second error is that the High Court in para 6 held that there are contradictions in the statements of the witnesses on the point of occurrence.

17. In our view, the High Court had no jurisdiction to appreciate the evidence

of the proceedings under Section 482 of the Code Of Criminal Procedure, 1973 (for short "Cr.P.C.") because whether there are contradictions or/and inconsistencies in the statements of the witnesses is essentially an issue relating to appreciation of evidence and the same can be gone into by the Judicial Magistrate during trial when the entire evidence is adduced by the parties. That stage is yet to come in this case."

(Emphasis added)

20. The Apex Court in its another judgment in the case of ***Nallapareddy Sridhar Reddy Vs. The State of Andhra Pradesh & Ors.*** reported in 2020 0 Supreme (SC) 45, dealing with a case under Sections 406 and 420 I.P.C. has observed that the Court does not have to delve deep into probative value of evidence regarding the charge. It has only to see if a prima facie case has been made out. Veracity of deposition/material is a matter of trial and not required to be examined while framing charge. The Apex Court further observed that the veracity of the depositions made by the witnesses is a question of trial and need not be determined at the time of framing of charge. Appreciation of evidence on merit is to be done by the court only after the charges have been framed and the trial has commenced. However, for the purpose of framing of charge the court needs to prima facie determine that there exists sufficient material for the commencement of trial. The Apex Court in paragraph nos. 21, 22 and 24 has observed as follows:

"21 The appellant has relied upon a two-judge Bench decision of this Court in Onkar Nath Mishra v The State, (2008) 2 SCC 561 to substantiate the point that the ingredients of Sections 406 and 420 of the

IPC have not been established. This Court while dealing with the nature of evaluation by a court at the stage of framing of charge, held thus:

"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

(Emphasis supplied)

22 In the present case, the High Court while directing the framing the additional charges has evaluated the material and evidence brought on record after investigation and held:

"LW1 is the father of the de facto complainant, who states that his son in law i.e., the first accused promised that he would look after his daughter at United Kingdom (UK) and promised to provide Doctor job at UK and claimed Rs.5 lakhs for the said purpose and received the same and he took his daughter to the UK. He states that his son-in-law made him believe and received Rs.5 lakhs in the presence of elders. He states that he could not mention about the cheating done by his son-in-law, when he was examined earlier. LW13, who

is an independent witness, also supports the version of LW1 and states that Rs.5 lakhs were received by A1 with a promise that he would secure doctor job to the complainant's daughter. He states that A1 cheated LW1, stating that he would provide job and received Rs.5 lakhs. LW14, also is an independent witness and he supported the version of LW13. He further states that A1 left his wife and child in India and went away after receiving Rs.5 lakhs.

Hence, from the above facts, stated by LWs. 13 and 14, prima facie, the version of LW1 that he gave Rs.5 lakhs to A1 on a promise that he would provide a job to his daughter and that A1 did not provide any job and cheated him, receives support from LWs. 13 and 14. When the amount is entrusted to A1, with a promise to provide a job and when he fails to provide the job and does not return the amount, it can be made out that A1 did not have any intention to provide job to his wife and that he utilised the amount for a purpose other than the purpose for which he collected the amount from LW1, which would suffice to attract the offences under Sections 406 and 420 IPC. **Whether there is truth in the improved version of LW.1 and what have been the reasons for his lapse in not stating the same in his earlier statement, can be adjudicated at the time of trial.**

It is also evidence from the record that the additional charge sheet filed by the investigating officer, missed the attention of the lower court due to which the additional charges could not be framed."

(Emphasis supplied)

24 The veracity of the depositions made by the witnesses is a question of trial and need not be determined at the time of framing of charge. Appreciation of evidence on merit is to be done by the court only after the charges have been framed and the trial has commenced.

However, for the purpose of framing of charge the court needs to prima facie determine that there exists sufficient material for the commencement of trial. The High Court has relied upon the materials on record and concluded that the ingredients of the offences under Sections 406 and 420 of the IPC are attracted. The High Court has spelt out the reasons that have necessitated the addition of the charge and hence, the impugned order does not warrant any interference."

(Emphasis added)

21. Again in the case of **Rajeev Kaurav Vs. Balasahab & Others** reported in 2020 0 Supreme (SC) 143, the Apex Court has held that it is no more res integra that exercise of power under Section 482 CrPC to quash a criminal proceeding is only when an allegation made in the FIR or the charge sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of process of any law or Court or otherwise to secure the ends of justice.

22. In the latest judgment of the Hon'ble Supreme Court in the case of **State of U.P. Vs. Akhil Sharda & Others** reported in 2022 SCC OnLine SC 820 has held that while deciding the application under Section 482 Cr.P.C., the High Court has conducted mini trial which is not permissible at that stage. The relevant portion whereof reads as follows:

"28. Having gone through the impugned judgment and order passed by the High Court by which the High Court has set aside the criminal proceedings in exercise of powers under Section 482 Cr.P.C., it appears that the High Court has

virtually conducted a mini trial, which as such is not permissible at this stage and while deciding the application under Section 482 Cr.P.C. As observed and held by this Court in a catena of decisions 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. (See Pratima (supra); Thom (supra); Rajiv (supra) and Niharika (supra).

29. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and the manner in which the High Court has allowed the petition under Section 482 Cr.P.C., we are of the opinion that the impugned judgment and order passed by the High Court quashing the criminal proceedings is unsustainable. The High Court has exceeded in its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 Cr.P.C.

30. It is also required to be noted that even the High Court itself has opined that the allegations are very serious and it requires further investigation and that is why the High Court has directed to conduct the investigation by CBCID with respect to the FIR No.227 of 2019. However, while directing the CBCID to conduct further investigation, the High Court has restricted the scope of investigation. The High Court has not appreciated and considered the fact that both the FIRs namely FIR Nos.260 of 2018 and 227 of 2019 can be said to be interconnected and the allegations of a larger conspiracy are required to be investigated. It is alleged that the overall allegations are disappearance of the trucks transporting the beer/contraband goods which are subject to the rules and

regulations of the Excise Department and Excise Law.

31 The High Court has quashed the criminal proceedings by observing that there was no loss to the Excise Department. However, the High Court has not at all appreciated the allegations of the larger conspiracy. The FIR need not be an encyclopedia (See Satpal Vs. Haryana, (2018) 6 SCC 110 Para 7).

*32 Even otherwise, it is required to be noted that the allegation of missing of two trucks was the beginning of the investigation and when during the investigation it was alleged that earlier also a number of trucks were missing transporting contraband goods, the FIR should not have been restricted to missing of the two trucks only and return of on the goods thereafter. **The High Court has not at all appreciated and/or considered the allegation of the larger conspiracy and that both the FIRs/criminal cases are interconnected and part of the main conspiracy which is very serious if found to be true. We however refrain from making any further observations as at this stage of proceedings as we are at the stage of deciding the application under Section 482 Cr.P.C. only and as the trial of both the cases have yet to take place. Therefore, we refrain from making any further observations which may affect the case of the either of the parties. Suffice it to say and mention that in the facts and circumstances of the case the High Court has committed a grave/serious error in quashing and setting aside the criminal proceedings arising out of Criminal Case No.5694 of 2019 and Case Crime No.260 of 2018 PS lodged under Section 406, registered at PS - Husainganj, District - Lucknow.***

(Emphasis supplied)

23. It is clear from the law laid down by the Apex Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding.

24. From the discussions and deliberations held above, this Court is of the view that the submissions made by the applicant's learned counsel call for adjudication on pure questions of fact which may adequately be 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 F.I.R. and the material collected by the Investigating Officer on the basis of which the charge sheet has been submitted makes 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 charge sheet or the proceedings against the applicants 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.

25. The prayer for quashing the impugned charge-sheet as well as the entire proceedings of the aforesaid State case are refused as I do not see any abuse of the court's process at this pre-trial stage.

26. This application under Section 482 Cr.P.C. devoid of merits and is accordingly **rejected**.

(2023) 4 ILRA 369

ORIGINAL JURISDICTION

CRIMINAL SIDE

DATED: ALLAHABAD 06.04.2023

BEFORE

THE HON'BLE UMESH CHANDRA SHARMA, J.

Application u/s 482 No. 13132 of 2022

Gopal Shriwas & Ors. ...Applicants
Versus
State of U.P. & Anr. ...Opp. Parties

Counsel for the Applicants:
Sri Umesh Kumar

Counsel for the Opp. Parties:
G.A., Sri Mahabir Yadav

A. Criminal Law -Indian Penal Code, 1860-Sections 498-A, 323, 504 & 506 & ¾ Dowry Prohibition, 1961 Act-Quashing of entire criminal proceeding-mediation failed-victim was physically and mentally tortured on the pretext of payment of additional dowry-her mother-in law and sister in law snatched her jewellery and her husband and father-in law left her at her parental house until the said demand was fulfilled- victim has specifically made allegations against the applicants-two witnesses corroborated the allegations and evidence of the victim-plea of alibi of father-in law that he was on duty is immaterial as the complaint is not filed on the basis of single incident occurred on particular date-she was physically and mentally tortured continuously since long-Hence,it cannot be said that mere general allegations have been leveled against the applicants-No ground to quash the proceedings.(Para 1 to 13)

The application is dismissed. (E-6)

List of Cases cited:

Kahkashan Kausar @ Sonam & ors. Vs St. of Bih. & ors. (2022) 0 Supreme SC 117

(Delivered by Hon'ble Umesh Chandra Sharma, J.)

1. Heard Sri Umesh Kumar, learned counsel for the applicants, Sri Pankaj Kumar Tripathi, learned AGA for the State and perused the record.

2. This application has been moved to quash the entire criminal proceedings of Complaint Case No.476 of 2020 (Smt. Jyoti Vs. Gopal Shriwas and others), under Sections 498-A, 323, 504, 506 IPC and Section 3/4 DP Act to the extent of applicant no.1 and under Sections 498-A, 323 IPC and Section 3/4 DP Act to the extent of applicant nos.2 to 4, Police Station Charkhari, District Mahoba pending before the Civil Judge (JD)/Judicial Magistrate, Charkhari, Mahoba and also the order dated 06.03.2021 passed by the Sessions Judge, Mahoba in Criminal Revision No.48 of 2020 (Smt. Jyoti Vs. Ramsevak and others) alongwith summoning order dated 11.03.2022 passed by the Civil Judge (JD)/Judicial Magistrate, Charkhari, Mahoba.

3. In brief, facts of the case are that applicant no.1 was married with opposite party no.2 with full love and affection and out of the wedlock a son Naman was born. After one year from the marriage opposite party no.2 demanded to live separately from his family at her parental house which was denied by applicant no.1 thereafter opposite party no.2 left the marital house on 04.04.2020 with her all belongings purchased by applicant no.1. On 29.09.2020 opposite party no.2 filed a complaint stating allegation of demand of dowry of Rs.1,00,000/- and one motorcycle and deposed falsely under Section 200