A.F.R.

Court No. - 11

Case :- U/S 482/378/407 No. - 6779 of 2016

Applicant :- Arvind Kejriwal & anr.

Opposite Party :- State Of U.P. & anr.

Counsel for Applicant :- Santosh Kumar Tripathi,Onkar Pandey

Counsel for Opposite Party :- Govt. Advocate

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Hon'ble Aditya Nath Mittal,J.

Heard learned counsel for the petitioners, learned Additional Government Advocate and perused the record.

This petition under Section 482 Cr.P.C. has been filed with the prayer to quash the order dated 07.10.2016, passed by the learned Additional Chief Judicial Magistrate-VI, Court No.22, Sultanpur, by which, the application of the petitioner no.1 for exemption has been rejected, as well as the Charge Sheet No.87 of 2015 dated 24.06.2015 and the cognizance order dated 13.04.2016 passed in Criminal Case No.216 of 2016 relating to Case Crime No.367 of 2014, under Sections 143, 186, 188, 341, 353 and 171-G I.P.C., Police Station-Gauriganj, District-Sultanpur.

Learned counsel for the petitioners has submitted that the petitioners are National leaders of a recognized Political Party and the petitioner no.1 is presently the Chief Minister of N.C.T. Delhi. The petitioner no.2 is Internationally a-claimed Poet. The petitioners were having the permission for procession of Rally and prohibitory order under Section 144 Cr.P.C. and permission for procession for rally cannot run together. It has also been submitted that the First Information Report does not constitute the offence as alleged and the charge-sheet has been filed in a mechanical way, upon which, the

learned Judicial Magistrate has also not applied his mind and has taken cognizance. It has also been submitted that to oblige the sitting Members of Parliament, the entire district administration and police force had caused impediment in election campaign of petitioner no.2 and have lodged various frivolous complaints. The petitioners were always calm and peaceful during their campaign. The different State Governments have taken a policy decision to withdraw the police case filed against the activists and politicians for agitation.

Learned Additional Government Advocate has defended the impugned order and has submitted that after due investigation, the charge-sheet has been filed and the petitioners are duty bound to obey the order of the court. It has also been submitted that the petitioner no.2 cannot have any grievance by the order dated 07.10.2016 and it was the duty of the petitioner no.1 to have appeared before the court, but till now, neither he has surrendered nor obtained bail. Therefore, his application for exemption from personal appearance was not maintainable and that has been rightly rejected.

As far as quashing the entire criminal proceedings of Case No.216 of 2016 on the basis of charge-sheet dated 13.04.2016 is concerned, the law on this point is quite settled, which is narrated as under:-

The power under Section 482 Cr.P.C. is not to be exercised in a routine manner, but it is for limited purposes, namely, to give effect to any order under the Code, or to prevent abuse of process of any Court or otherwise to secure ends of justice. Time and again, Apex Court and various High Courts, including ours one, have reminded when exercise of power under Section 482 Cr.P.C. would be justified, which cannot be placed in straight jacket formula, but one thing is very clear that it should not preampt a trial and cannot be used in a routine manner so as to cut short the entire process of trial before the Courts below. If from a bare perusal of first information report or complaint, it is evident that it does not disclose any offence at all or it is frivolous, collusive or oppressive from the face of it, the Court may

exercise its inherent power under Section 482 Cr.P.C. but it should be exercised sparingly. This will not include as to whether prosecution is likely to establish its case or not, whether the evidence in question is reliable or not or whether on a reasonable appreciation of it, accusation would not be sustained, or the other circumstances, which would not justify exercise of jurisdiction under Section 482 Cr.P.C. I need not go into various aspects in detail but it would be suffice to refer a few recent authorities dealing all these matters in detail, namely, ***State of Haryana and others Vs. Ch. Bhajan Lal and others 1992 Supp (1) SCC 335, Popular Muthiah Vs. State represented by Inspector of Police (2006) 7 SCC 296, Hamida vs. Rashid @ Rasheed and Ors. (2008) 1 SCC 474, Dr. Monica Kumar and Anr. vs. State of U.P. and Ors. (2008) 8 SCC 781, M.N. Ojha and Ors. Vs. Alok Kumar Srivastav and Anr. (2009) 9 SCC 682, State of A.P. vs. Gourishetty Mahesh and Ors. JT 2010 (6) SC 588 and Iridium India Telecom Ltd. Vs. Motorola Incorporated and Ors. 2011 (1) SCC 74.***

In ***Lee Kun Hee and others Vs. State of U.P. and others JT 2012 (2) SC 237,*** it was reiterated that Court in exercise of its jurisdiction under Section 482 Cr.P.C. cannot go into the truth or otherwise of the allegations and appreciate evidence, if any, available on record. Interference would be justified only when a clear case of such interference is made out. Frequent and uncalled interference even at the preliminary stage by High Court may result in causing obstruction in the progress of inquiry in a criminal case which may not be in public interest. It, however, may not be doubted, if on the face of it, either from the first information report or complaint, it is evident that allegation are so absurd and inherently improbable on the basis of which no fair-minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding, in such cases refusal to exercise jurisdiction may equally result in injustice, more particularly, in cases, where the complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint.

However, in this matter, after investigation, Police has found a prima facie case against accused and submitted charge-sheet in the Court below. After investigation the police has found a prima facie case of commission of a cognizable offence by accused which should have tried in a Court of Law. At this stage there is no occasion to look into the question, whether the charge ultimately can be substantiated or not since that would be a subject matter of trial. No substantial ground has been made out which may justify interference by this Court under Section 482 Cr.P.C.

From perusal of the First Information Report as well as other papers, it cannot be said that no cognizable offence is made out against the petitioners. There are specific allegations against the petitioners that permission for road show/ procession was granted from Amethi to Tikar Mafi upto Gauriganj Tiraha Munshiganj. The petitioners had parked their vehicles in the mid of road and started their campaign on the crossing. The District Election Officer has not granted such permission. Due to illegal act of the petitioners, there were problem of traffic jam. It has also been mentioned in the First Information Report that Vehicle No.UP-30-T-7718 was having loudspeaker and it was not having any paper and when the driver was asked to go to police station, the petitioners' party workers opposed it and forcefully took away the vehicle, against which, the petitioners and their party workers used criminal force against the public servants from discharge of their duty. The petitioners had violated the code of conduct as well as the provisions of Section 144 Cr.P.C.

In the matter, after investigation, the charge-sheet has been filed against various persons including the present petitioners

From the aforesaid facts, it cannot be said that no cognizance offence is made out against the petitioners.

Learned counsel for the petitioners has emphasized that the offence punishable under Section 171-G I.P.C. is not made out because they had not made any such false statement, which may effect the result of the election. Even for the sake of argument, this

submission is accepted then even there are other charges also and whole of the proceedings cannot be quashed simply on the ground that the offence punishable under Section 171-G I.P.C. is not made out. The petitioners shall have the full opportunity to take this plea at the time of framing of the charges.

As far as challenge the order dated 07.10.2016 is concerned, I find substance in the submission of learned Additional Government Advocate that the petitioner no.2 has no grievance by this order because the summons have been issued against the petitioner no.2 and the previously issued summons were not served sufficiently.

Learned counsel for the petitioners has submitted that the petitioner no.1 is the Chief Minister of N.C.T. Delhi and he was busy, therefore, he could not appear before the court below and moved the application for exemption from personal appearance.

Undisputedly, the summon upon the petitioner no.1 has been served sufficiently. Learned court below has mentioned in his order that the petitioner no.1 has not yet appeared before the court. He has neither surrendered nor has moved any application for bail, therefore, his personal appearance cannot be exempted through counsel.

The provisions of Section 205 Cr.P.C. are clear that the Magistrate, who has issued the summons, may dispense with the personal attendance of the accused only if he sees reason to do so. From language of Section 205 Cr.P.C., it is clear that the Magistrate is not bound to accept every application to dispense with the personal attendance of the accused. It is his judicious discretion.

As far as withdrawl of prosecution against the activists or politicians by the State of Maharashtra is concerned, the decision of the State of Maharashtra is not applicable to the State of U.P.. There are specific provisions in Section 321 Cr.P.C. to this effect and till date no such decision has been taken to withdraw the present prosecution either by the State Government or by the Public Prosecutor. Therefore, this argument also has no force.

In the present case, the Magistrate concerned has not found sufficient reason to exempt the personal appearance of petitioner no.1 on the ground that till now the petitioner no.1 has neither appeared personally nor has submitted the bail bonds.

The law on the point is settled that at the first instance, the accused has to appear personally and after surrendering himself before the court, he has to apply for bail and if the accused is released on bail, his personal attendance may be dispensed with at the discretion of the trial court.

Whosoever influential leader, highly placed person, nationally renowned politician and other person belonging to high class may be, the law is equal to all. Code of Criminal Procedure has not granted any special status to the politicians or renowned Poet. All are equal in the eyes of law and all have to be treated equally. Article 14 of the Constitution of India provides for equality before law and the equal protection of the laws for all. Either the Constitution of India or the Code of Criminal Procedure and Indian Penal Code or other laws do not provide any categorization of the accused persons with regard to their status. Therefore, I do not find any substance in the submission of learned counsel for the petitioners that the petitioner no.1 being the Chief Minister of N.C.T. Delhi and the petitioner no.2 being Nationally renowned Poet are entitled to the benefit of Section 205 Cr.P.C. as of right. Under the provisions of Code of Criminal Procedure, the accused is required to furnish his bail bonds after obtainining the order of bail from the court concerned and has to execute the personal bond with or without sureties. After going through such process, if the court thinks fit, his personal appearance may either to be dispensed with on day-to-day basis or till further orders. In any criminal trial, the personal attendance of the accused is more particularly required at the stage of framing the charge and at the stage of recording statement under Section 313 Cr.P.C. But in all circumstances, it is the discretion of the trial court and the trial court in his discretion, at any stage of proceedings, can enforce such

attendance. Needless to mention that nobody is above the law and everyone is required to follow and obey the law. The Magistrate concerned by order dated 07.10.2016 has mentioned the reasons for not dispensing with the personal attendance of petitioner no.1 and I do not find any illegality or perversity or abuse of process of law in the order dated 07.10.2016. It is also relevant to mention that as per the charge-sheet, there are six accused persons and present two petitioners have no locus to get quashed the entire proceedings of Case No.216 of 2016.

For the facts and circumstances mentioned above, I do not find any sufficient ground to interfere in the present matter. I also do not find any sufficient ground to quash the entire criminal proceedings of Case No.216 of 2016. The petition lacks merit, deserves to be dismissed.

The petition is, therefore, dismissed.

Order Date :- 21.10.2016
Suresh/