

**AFR****Court No. - 67****Case :- APPLICATION U/S 482 No. - 554 of 2018****Applicant :- Amir And 8 Others****Opposite Party :- State Of U.P. And Another****Counsel for Applicant :- Ramesh Chandra Agrahari, Anoop Trivedi****Counsel for Opposite Party :- G.A., Rakesh Dubey****Hon'ble Rahul Chaturvedi, J.**

1. Heard Sri Sri Anoop Trivedi assisted by Ramesh Chandra Agrahari,, learned counsel for the applicants, Sri Rakesh Dubey, learned counsel for the complainant, learned AGA and perused the records.

2. Today the date was fixed to consider and decide the recall application no. 3 of 2018 for recalling the earlier ex-parte order dated 10.01.2018 with a prayer to dismiss the instant application filed under section 482 Cr.P.C., with cost.

**3. Backgrounds of the Case :-**

(a) The applicants, namely, (i) Amir, (ii) Pappi, (iii) Tausif, (iv) Asim, all sons of Siddique, (v) Faraz s/o Shoeb, (vi) Mohd. Zain s/o Mohd. Asim, (vii) Guddu Gupta s/o Chunni Lal, (viii) Ayush Gupta s/o Guddu Gupta and (ix) Ranu Pal s/o Chandpal had jointly invoked extraordinary jurisdiction of this Court under Section 482 Cr.P.C. with a prayer to quash the impugned order dated 20.12.2017 passed by learned ACMM-VII, Kanpur Nagar in criminal case no. 7730 of 2017 (State Vs. Asim @ Pappu Smart and others) arising out of case crime no. 913 of 2015, under Sections 467, 468, 471, 506, 387, 420 and 120B IPC, P.S. Chakeri, District Kanpur Nagar pending in the aforesaid court.

(b) During the initial arguments on 10.01.2018, it was canvassed by the learned counsel for the applicants that Sandeep Shukla, private opposite party, after projecting himself as a RTI activist, managed to lodge the present FIR, levelling vague and sweeping allegations. The police, after conducting superficial investigation in the matter, submitted charge sheet on 22.10.2017 against the applicant whereupon learned Magistrate took mechanical cognizance of the offence under sections 467, 468, 471, 506, 387, 420 and 120-B IPC in Criminal Case No. 7730 of 2017 arising out of Case Crime No. 913 of 2015 vide order. Aggrieved by the charge sheet, so submitted by the police, the applicants preferred Criminal Revision No. 329 of 2017 (Mohd. Amir and others v. State of U.P. And another), which also met the same fate and was dismissed on some erroneous ground by judgement and order dated 12.12.2017.

(c ) During the course of entire argument it was never brought to the notice of this Court by the learned counsel for the applicants with regard to the fact that on earlier occasions, the aforesaid applicants approached this Court by invoking jurisdiction under Section 482 Cr.P.C. filing Criminal Application u/s 482 No. 7490 of 2017 (Asim @ Pappu Smart s/o late Siddik v. State of U.P. And Sandeep Shukla), Criminal Misc. Application u/s 482 No. 7491 of 2017 (Tousif and others v. State v. State and Sandeep Shukla) and Criminal Application U/S 482 No. 10634 of 2017 (Ayush Gupta and another v. State of U.P. And others). It is remarkable that clandestinely, different learned counsel for the applicants in different innings of

section 482 Cr.P.C. played gimmicks with the Courts i.e. in all the aforesaid applications various names of of the applicants find place in the same case crime number and sections wherein same liberties on same grounds have been mentioned whereupon vide different orders they managed to get limited liberty of surrendering themselves and getting bailed out. (A detailed synopsis of the all the aforesaid cases shall be extracted herein after). Astutely in paragraphs, 22, 23 and 24 of the affidavit accompanying the 482 application, only sweeping reference is being made about earlier proceedings without annexing copies of those orders passed by the coordinate Bench of this Court in earlier 482 applications.

3. Learned counsel for the applicants portrayed an innocent impression before this Court that present is first 482 Cr.P.C. application for the aforementioned prayer and as such on 10.01.2018 an ex-parte interim protection was passed in favour of all the applicants with a direction to the opposite party no.2 to file counter affidavit and thereafter rejoinder affidavit.

4. Sri Rakesh Dubey, learned counsel for the complainant (private opposite party) moved the instant recall application on 19.02.2018 for recalling order of this Court dated 10.01.2018 and dismissing the application with heavy cost. In his recall application startling revelation has been made by the learned counsel for the opposite party no.2, annexing all the previous 482 applications filed by applicants Asim @ Pappu Smart, Tausif @ Kakku Smart and seven

others, Ayush Gupta and another, Asim @ Pappu Smart and four others and lastly Pappi and another along with their respective orders passed by different coordinate Benches of this Court.

5. At this juncture, this Court finds it imperative to spell out nucleus of all the aforementioned contretemps applications along with their respective prayers and ultimate nutshell orders passed in their respective proceedings by coordinate Benches of this Court, which runs as under :-

**(a) Application U/S 482 No. 7490 of 2017**

**(Asim @ Pappu Smart s/o late Siddik v. State of U.P. And Sandeep Shukla) :-**

The aforementioned case was filed for quashing the proceeding of criminal case no. 7730 of 2017 arising out of case crime no. 913 of 2015, under Sections 467, 468, 471, 504, 387, 420 and 120B IPC and coordinate Bench of this Court while disposing of the aforementioned 482 application vide order dated 07.03.2017 has declined to quash the proceeding and the charge sheet and has granted limited liberty to appear and surrender before the court below within thirty days and apply for bail, then bail application would be considered and decided in view of the settled law laid down by this Court in the case of *Amrawati and another Vs. State of U.P. reported in 2004(57) ALR 290* as well as judgment passed by Hon'ble Apex Court reported in *2009(3) ADJ 322(SC) Lal Kamendra Pratap Singh Vs. State of U.P.* and for a period of thirty days no coercive action shall be taken against the applicant.

**(b) Application U/S 482 No. 7491 of 2017**

**(Tousif and others v. State v. State and Sandeep Shukla)**

Thereafter co-accused persons namely Tausif @ Kakku Smart and seven others of the same criminal case and with the same proceeding also approached this Court by means of the Application U/S 482 No. 7491 of 2017 with the same counsel and on the same date i.e., 07.03.2017. The said 482 application too was disposed of with the above direction as the earlier one i.e. granting a liberty to surrender and decline to quash the proceeding and charge sheet and granting liberty to surrender and got themselves bailed out within 30 days and during this period no coercive action shall be taken against the applicants.

**(c) Application U/S 482 No. 10634 of 2017**

**(Ayush Gupta and another v. State of U.P. And others)**

Rest of the co-accused Ayush Gupta and Ramesh Gupta also chose the same path, as of their co-accused persons, and knocked the doors of this Court by filing of 482 application no. 10634 of 2017 with the same prayer i.e to quash rolling proceedings of case crime no. 913 of 2015 and Hon'ble Mr. Justice R.D.Khare (as His Lordship then was) while refusing to interfere with the charge sheet, granted protection of 45 days in favour of the applicants with a direction that they would surrender before the court concerned and apply for bail and their bail application shall be heard and decided in the light of **Amrawati and another Vs. State of U.P. reported in 2004(57) ALR 290** as well as judgment passed by Hon'ble Apex Court reported in **2009(3) ADJ 322(SC) Lal Kamendra Pratap Singh Vs. State of U.P.** and for a period of forty five days no coercive

action shall be taken against the applicants.

6. Perusal of record reveals that all these accused persons approached this Court just to buy the time of the Court as they were not serious to adhere to the direction/liberty granted by the Court for getting themselves surrendered and apply for bail. With no room left, learned Magistrate was compelled to issue Non Bailable Warrants dated 16.06.2017.

7. Again the same “trick” was repeated by these unscrupulous litigants by invoking jurisdiction under Section 482 Cr.P.C., an application under Section 482 no. 20984 of 2017 in second innings, was moved on behalf of the Asit @ Pappu Smart and four others challenging the NBW dated 16.06.2017 in case no. 7730 of 2017 and this coordinate Bench of this Court had benevolently granted indulgence of forty five days from 11.07.2017 granting liberty to the applicants to apply for bail and get themselves bailed out in the light of ratio laid down in case of **Amrawati and another Vs. State of U.P. reported in 2004(57) ALR 290** as well as judgment passed by Hon'ble Apex Court reported in **2009(3) ADJ 322(SC) Lal Kamlendra Pratap Singh Vs. State of U.P.** and for that period of thirty days no coercive action shall be taken against the applicants. Intoxicated archaically by the aforesaid foul play, the remaining co-accused persons Pappi and others further filed application under Section 482 Cr.P.C., No. 20112 of 2017 which was disposed of in the similar terms and conditions by Hon'ble Mr. Justice Mukhtar Ahmad

(as His Lordship then was).

8. When through the instant 482 Cr.P.C. application targeting the validity and veracity of the order dated 20.12.2017 was filed, the copy of order sheet of the court below was also annexed, relevant extract of the same is quoted herein below:-

"२०.१२.२०१७ - पेश हुआ / अभियुक्तगणों की आज हाज़िरी माफ़ की गयी / वास्ते अंतर्गत धारा २३९ हेतु दिनांक १७.०१.२०१७ को पेश हो / आपत्तिया आहूत हो /

वदहु पत्रावली के अवलोकन से विदित हुआ कि अभियुक्तगण मो० आसिम व मो० आमिर हाज़िर आ रहे हैं शेष अभियुक्तगण गैर हाज़िर हैं / गैर हाज़िर अभियुक्तगण आदेश दिनांक २४.१०.२०१७ के अनुसार जरिये एन० बी० डब्लू०/ ८२ सी०आर०पी०सी० तालाब हो।"

9. Learned counsel for the applicant submits that he moved an application under Section 239 Cr.P.C., seeking discharge and without deciding the discharge application, learned Magistrate had issued Non bailable warrants and proceeded with the 82 Cr.P.C. proceedings.

10. Learned counsel was quite baffled with the orders passed by learned Magistrate while passing the impugned order dated 20.12.2017 passed by VII-Additional Chief Matropolitan Magistrate, Kanpur Nagar and has strenuously argued that it is the valuable legal right of any accused to seek discharge by moving an application under Section 239 Cr.P.C.

11. No doubt that it is the right of every accused to seek discharge at an appropriate stage by making a suitable application before the

court concerned but before filing discharge application, it also stringent that accused has to surrender before the majesty and authority of the court, though it is separate and debatable proposition.

12. From the aforementioned discussions it is clear that the applicants are unscrupulous litigants, who are approaching this Court time and again just to buy the time and thus have abused the process of Court for their joy rides. Without mincing any expression in the context, this Court is constrained to hold that the applicants have not come up before this Court with clean hands, they are making every attempt to circumvent and play tricks with the process of law for their advantage. It an accused is conscious about exercising his valuable right to seek discharge and for which he has approached this Court thrice, then he was also duty bound to comply with the directions of this Court in letter and spirit, within the prescribed time.

13. From July 2017 by one proceeding to another, they are befooling the process of law and courts of law for their pithy gains and want to linger on the proceedings for eternity.

14. The basic object of incorporating Section 482 Cr.P.C. proceedings, is to equip the High Courts, to evaluate interlocutory orders from which either of the contesting parties feels aggrieved and to prevent abuse the process of law by court/s below, if any, or otherwise to secure the ends of justice. The past record and the



conduct of the applicants is despicable, shameful and thus agonizing for this Court. The applicants seem to be more vigilant about their discharge instead of complying with the directions of the Court given to them, time and again since July 2017. They are deliberately running out from participation in the criminal proceedings by adopting *animus nocendi* (subjective state of mind of the author of a crime, with reference to the exact knowledge of illegal content of his behaviour, and of its possible consequences) excavating technical illegal means from the provisions of the Code of Criminal Procedure under the Cr.P.C., and thus they do not deserve any sympathy from this Court.

15. After hearing both the parties, I am constrained to withdraw/recall my earlier order dated 10.10.2018 by imposing an exemplary cost of Rs. 25,000/- each upon every applicant who has not been bailed out so far despite earlier orders of this Court to be recovered by the concerned Magistrate or competent administrative authority empowered to recover the aforesaid amount from these applicants within a period of 30 days from today and deposit it in some welfare scheme of Advocates and direct the learned Magistrate to exercise his power, right and judicial might with prudence envisaged in the provisions of Code of Criminal Procedure to procure their attendance before the court at the earliest. After the said recovery an intimation shall be sent to this Court, with regard to compliance of the Court's order.

16. Let a copy of this order may be sent to court concerned by the office through fax at the earliest.

17. Since the applicants have not come with the clean hands, I am not inclined to exercise my extraordinary power under Section 482 Cr.P.C. and accordingly, the present 482 Cr.P.C. is, hereby, rejected.

18. Accordingly, the recall application is, hereby, allowed.

**Order Date :-** 1.5.2019  
Abhishek Sri.