

Court No. - 92

Case :- APPLICATION U/S 482 No. - 4309 of 2009

Applicant :- Abhinav Goel And Another

Opposite Party :- State Of U.P.And Another

Counsel for Applicant :- Amit Daga

Counsel for Opposite Party :- Govt. Advocate,Pankaj Bharti,Pankaj Bhart

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Amit Daga, learned counsel for the applicants, Sri Saurav Kumar, Advocate holding brief of Sri Pankaj Bharti, learned counsel for the opposite party no.2 and Sri Pankaj Srivastava, learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the entire proceedings in Criminal Complaint Case No.2822/9/2008 (Riyaz Haidar vs. V.K. Kauri and Ors.) u/S 166 and 506 I.P.C., P.S.- Kotwali, District-Muzaffarnagar, pending in the court of learned Chief Judicial Magistrate, Muzafarnagar.

3. Learned counsel for the applicants submits that the applicants are employees of Electricity Department of the U.P. Power Corporation. Learned counsel for the applicants submits that the allegations in an application u/S 156(3) Cr.P.C., which was converted into a complaint case is that, that the applicants being the employees of the Electricity Department, went to the house of the opposite party and asked for inspection of the Electricity Metre, as earlier also the tampering was found in the Electricity Metre installed in the house of the opposite party no.2. The allegations made in the complaint is that when the opposite party no.2 asked for the Identity Card of the persons, who came for inspection, only one person shown the ID Card and the other persons refused to show their Identity. Therefore, he restraint them from inspecting the Electricity Metre. Then, they asked some bribe from the opposite party no.2, which the opposite party no.2 refused to give and did not allow the Inspection Team to inspect the Metre. Then, the allegation is that they threatened the opposite party no.2 to implicate them in a false case, if the demand of bribery is not fulfilled. Learned counsel for the applicants further submits that earlier also, in the year 2007, the Inspection Team of the Electricity Department has inspected the Electricity Metre installed in the house of the opposite party no.2 and found the tampering in the said Electricity Metre, on which the provisional assessment was done and new Electricity Metre was installed on 17.03.2007,

after depositing of the said amount by the opposite party no.2 herein.

4. Learned counsel for the applicants further submits that since the officials were discharging their official duty in accordance with law and inspection of various Metres was done and on 06.02.2008, the said team has inspected the Metre installed in the house of the father of the opposite party no.2 as well, which was also found tampered, whereupon, the father of the opposite party no.2 deposited a sum of Rs. 10,000/- as provisional assessment amount and on such deposit, the new Electricity Metre was installed. Therefore, since the previous conduct of the opposite party no.2 was of tampering of any Electricity Metre, therefore, the applicants had a reasonable suspicion about the tampering in the Metre in future also. Earlier, as the Metre installed in the house of the father of the opposite party no.2 was also found tampered, therefore, they were discharging their duty and in their official capacity, if such complaints are maintained, then, the Government Servants will not be able to discharge their duties fearlessly. Learned counsel for the applicants further submits that since the applicants were the Government Servants, it was mandatory for the learned Magistrate to obtain sanction before summoning the applicants in terms of Section 197 Cr.P.C. and learned Magistrate has issued summons against the applicants without complying with the mandatory provisions of Section 197 Cr.P.C. Learned counsel for the applicants further submits that in the instant case, the summons have been issued against the applicants for the offences u/S 166 and 506 I.P.C., and from the bare reading of the complaint, no offence u/S 166 I.P.C., is made out as there was no disobedience of any direction of the law in which the applicants were expected to conduct themselves as public servants and they were discharging their duties in accordance with law. Therefore, such complaint is baseless and no offence u/S 166 I.P.C., is made out. In the said complaint, therefore, learned counsel for the applicants prays for quashing of the summoning order as well as the entire proceedings of the aforesaid complaint case.

5. Learned counsel for the opposite party no.2 submits that applicants herein have arrived at the house of the opposite party no.2 and despite demand they did not show their ID Cards, therefore, he had a reasonable suspicion, therefore, he did not allow them to inspect the Metre. Learned counsel for the opposite party no. 2 further submits that since the applicants had demanded the bribe, which was not the mandate of law and which was not permissible and that was not the act in discharge of their duties, therefore, the offence alleged against the applicants is made out, therefore, he has prayed for dismissal of

the instant application.

6. Per contra, learned A.G.A for State submits that from peculiar facts and circumstances as narrated hereinabove, if such complaints by the individuals is entertained, then, the public servants will not be able to discharge their duty which is assigned to them. Therefore, he has also submitted that such complaints, by the opposite party no.2, is nothing but a frivolous complaint. Looking at the facts and circumstances of the case, learned counsel for the State do not oppose the prayer made by learned counsel for the applicants.

7. Having heard the submissions made by learned counsels for the parties, this Court has carefully gone through the record of the case. From the record of the case, it is apparent that the Electricity Metre was installed in the house of the opposite party no.2, which was found by the Inspection Team earlier on 17.03.2007, to have been tampered, thereupon, on deposit of Rs. 10,000/- as provisional assessment charges by the opposite party no.2, a new Metre was installed. Subsequently, when again the inspection was carried out in the month of February, 2008, the Metre installed in the house of the father of the opposite party no.2 was found tampered and which was admitted by the father of the opposite party no.2 and thereupon he deposited the charges in accordance with law, thereupon the new Metre was installed in his house on 06.02.2008. Therefore, from the aforesaid documents which have been annexed as Annexure '1' & '2' to the instant application, it is apparent that the opposite party no.2 was earlier found to have indulged in tampering of installed Metre. Therefore, the Inspection Team of the Electricity Department has a reasonable suspicion about tampering of the Metre again. Therefore, they had went to the house of the opposite party no.2 for inspection of the Metre, which was not allowed by opposite party no.2 and the instant complaint has been lodged by the opposite party no.2 on 22.02.2008, on the basis of false and fabricated story and in the instant case, since, the applicants were Government servants and the learned Magistrate has proceeded to issue summons against the applicants without seeking any sanction u/S 197 Cr.P.C., which was mandated, therefore, in the considered opinion of the case, this complaint by the opposite party no.2 appears to be a *prima facie* false and frivolous complaint. Therefore, the summoning order, since it was passed without any sanction against the Government servants, therefore, the same is vitiated. In the instant case, it is apparent that the instant application was filed by the opposite party no.2, in the year 2009. Since then, the opposite party no.2 as well as the State has not filed any counter in the instant case. Therefore, averments made with regard to the previous conduct of the

opposite party no.2 is unopposed and is deemed to be true in the facts and circumstances of the case.

8. Further, from the plain reading of the complaints, in the considered opinion of this Court, no offence u/S 166 I.P.C., is made out. Therefore, the summoning order as well as entire proceedings of the instant case deserves to be quashed and are hereby ***quashed*** and the instant application is ***allowed*** according.

Order Date :- 14.12.2023

Shubham Arya