

Court No. - 91

Case :- APPLICATION U/S 482 No. - 3468 of 2022

Applicant :- Amar Nath Patel And 2 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Girja Shanker Mishra,Pratiksha Rai

Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar,J.

1. Heard learned counsel for the applicants and learned A.G.A for the State as also perused the record.
2. This application under Section 482 Cr.P.C. has been filed to quash the summoning order dated 1.12.2021 as well as charge sheet dated 11.10.2021 arising out of case crime no.448 of 2021, under sections 323, 504, 506, 452, 354 Kha IPC and Section 7/8 of Protection of Childrens from Sexual Offences (POCSO) Act, P.S. Badagaon, District Varanasi.
3. It is submitted by the learned counsel for the applicants that initially a first information report was lodged against the applicants by opposite party no.2 on the basis of false and frivolous allegation. The investigation Officer after completing investigation submitted charge sheet against the accused Amar Nath Patel and Bablu Patel for the offence under sections 323, 504, 506, 452 IPC and accused Suraj Patel S/o Amar Nath Patel for the offence under sections 323/504/506/452/354Kha and Section 7/8 POCSO Act. It is further submitted that the learned Magistrate vide order dated 1.12.2021 has taken cognizance in a mechanical way against all the accused persons for the offence under section 323, 504, 506, 452, 354 Kha IPC and Section 7/8 POCSO Act, P.S. Badagaon, District Varanasi.
4. Per contra, learned AGA opposed the prayer of the applicants, but cannot dispute the above fact.
5. In view of the aforesaid submission and perusal of the record, it is apparent that the Investigating Officer submitted charge-sheet after completing the investigation against the applicants Amar Nath Patel and Bablu Patel under sections 323/504/506/452 and against the accused Suraj Patel for the offence under sections 323/504/506/452/354Kha and Section 7/8 POCSO Act by the Special Judge, POCSO Act in a mechanical way summoned all the

accused persons. The impugned summoning order 1.12.2021 has been passed without applying judicial mind, which cannot sustained in the eye of law.

6. Looking to the facts and circumstances of the case and without going into the merits of the case as of now, the summoning order dated 1.12.201 is hereby set aside.

7. The present application U/S 482 Cr.P.C is **allowed** to the extent.

8. The matter is remanded back to the trial court concerned to pass a fresh order in accordance with law after taking material collected by the Investigating Officer within a period of six weeks from the date of production of a certified copy of this order.

Order Date :- 31.10.2023
SFH