

Court No. - 69

Case :- APPLICATION U/S 482 No. - 51 of 2002

Applicant :- Shobha Ram And Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Ashfaq Ahmad Ansari, Premnendra Singh

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Samit Gopal, J.

1. In the revised call the matter was taken up and there was no appearance on behalf of the applicants despite the fact that there are two learned counsels appearing in the matter and as such the matter was dismissed in non prosecution. Subsequently while rising, learned counsel for the applicants made a mention before the Court that he is ready to argue the matter which may be heard, and, thus the matter is being taken up post lunch and is being heard.

2. Heard Sri Premnendra Singh, learned counsel for the applicants, Sri Ajay Singh, learned A.G.A.-I for counsel for the State and perused the record.

3. Notice upon the opposite party no. 2 has been served twice but despite service, no one appears on behalf of the opposite party no. 2 even when the matter has been taken up in the revised list.

4. The present 482 Cr.P.C. application has been filed by the applicants Shobha Ram, Sheo Sharan, Raghvendra, Ram Lal, Prabhu Dayal, Rajendra, Lala Ram, Hakai with the following prayers:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow the present application and set aside the impugned order dated 30.3.2001 passed by the Additional Chief Judicial Magistrate, Mehrauni, District Lalitpur in complaint Case No. 183/2001, Vijendra versus Lala Ram and others.

It is further prayed that this Hon'ble Court may kindly be pleased to stay the further proceeding of complaint Case No. 183/2001, Vijendra versus Lala Ram and others, pending before Additional Chief Judicial Magistrate, Mehrauni, District Lalitpur during the pendency of the present application before

this Hon'ble Court and/or this Hon'ble Court may pass such other and further orders which this Hon'ble may deem fit and proper under the facts and circumstances of the case."

5. The brief facts of the case are that an application under Section 156(3) Cr.P.C. dated 24.8.1999 has been filed by the opposite party no. 2 against the applicants. The court concerned vide order dated 24.8.1999 directed lodging of a F.I.R. and investigation in the same. In compliance of the said order an F.I.R. was lodged as Case Crime No. C-1/1999, under Sections 147, 379, 411, 323, 504, 506 I.P.C. at Police Station Mehrauni, District Lalitpur. The matter was investigated and a final report was submitted against which a protest petition was filed on which final report was rejected and the matter was directed to be registered as a complaint case after which inquiry under Sections 200 and 202 Cr.P.C. was done and the applicants were summoned vide order dated 30.3.2001 by the trial court.

6. Learned counsel for the applicants argued that the applicants have been falsely implicated in the present case. It is argued that in so far as statements of the complainant and the witnesses recorded under Sections 200 and 202 Cr.P.C. are concerned, there are contradictions in the same. It is argued that Vijendra Kumar Purohit/complainant was examined under Section 200 Cr.P.C. whereas Swami Prasad and Jagannath were examined under Section 202 Cr.P.C. as P.W.-1 and P.W.-2 respectively. It is argued that P.W.-1 and P.W.-2 are not consistent with regards to the persons who were present at the fields. It is argued that since the police found the matter to be false and proceeded to file a Final Report which has been rejected by the trial court without appreciating the matter in its true perspective summoned the accused persons to face trial. It is argued further that there is no evidence whatsoever that there has been assault on the father of the complainant inasmuch as there is no medical examination report of the said person on record to corroborate the said allegation. It is further argued that in so far as the allegation regarding taking away of crops is concerned, the same is also without any corroboration and the witnesses Swami Prasad and Jagannath examined as P.W.-1 and P.W.-2 respectively are the interested and partisan witnesses. It is argued that the as such the proceedings against the applicants be quashed and the present application under Section 482 Cr.P.C. be allowed.

7. Per contra, learned A.G.A. opposed the prayer for quashing and argued that presence of the complainant in the F.I.R. goes to show that there are allegations of the accused persons entered in the fields of the informant and assaulting his father with kicks and fists which was seen by other persons. The accused persons

were armed with lathi, danda and other arms and they also indulged in taking away crops which were lying in the bags and wood in the field. It is argued that a perusal of the material on record would go to show that offence is made out against the applicants.

8. After having heard learned counsels for the parties and perusing the records, it is evident that the F.I.R. was lodged on the basis of an application moved under Section 156(3) Cr.P.C. against the applicants. In compliance of the order dated 24.8.1999 of the court concerned, the matter was investigated and a final report was submitted after which a protest petition was filed which was directed to be treated as complaint case on which the statements of the complainant and his two witnesses were recorded under Sections 200 and 202 Cr.P.C. Subsequently, final report was rejected and the accused/applicants were summoned.

9. The Apex Court in the cases of ***Pepsi Foods Ltd. v. Special Judicial Magistrate : (1998) 5 SCC 749*** has held that summoning of an accused in a criminal case is a serious matter and should not be done in a casual manner. In the present case there is no corroboration regarding allegation of assault upon Swami Prasad, the father of the complainant, by the accused persons. The witnesses examined in the inquiry as produced are interested and partisan witnesses.

10. In view of the same, this Court comes to a conclusion that the order dated 30.3.2001 summoning the applicants deserves to be set aside and is hereby set aside.

11. The present 482 Cr.P.C. application is, accordingly, allowed.

(Samit Gopal,J.)

Order Date :- 7.12.2023

Naresh