

Neutral Citation No. - 2023:AHC:201021

Reserved on:- 06.10.2023

Delivered On:- 19.10.2023

Court No. - 53

Case :- APPLICATION U/S 482 No. - 2674 of 2005

Applicant :- Ram Pravesh And Antoher

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

Counsel for Applicant :- B.N. Singh,R.C. Tiwari,Rajiv Lochan Shukla,Umesh Vats

Counsel for Opposite Party :- Govt. Advocate,B.M.Pandey,N.L.Tripathi

Hon'ble Syed Aftab Husain Rizvi,J.

1. This application under Section 482 Cr.P.C. has been filed to quash the proceedings of Case No.203 of 2004 (State Vs. Ram Pravesh and others), under Sections 323, 504, 506 I.P.C., P.S.- Badhalganj, District- Gorakhpur pending in the Court of ACJM, Court No.13, Gorakhpur.

2. On an application filed by opposite party no.2, an NCR No.402 of 2003 was registered at Police Station- Badhalganj, District- Gorakhpur against applicants on 24.10.2003 at 14:45 hours. The allegations are that the informant, namely, Sheetala Tiwari is resident of village Soukhor and do business at Badhalganj. As usual, he came at his business establishment at about 11 A.M., thereafter, Ram Pravesh and Ram Ashare with some other persons, whom the family members of the informant identify, assaulted the uncle, father and children of the informant. They also abused, and threatened them with death wielding knives and lathi. When the informant came at his house at 8 P.M., he came to know about the incident. The opposite party no.2 moved an application under Section 155(2) Cr.P.C., before the concerned Magistrate for permission to investigate. On this application, order for investigation was passed and, thereafter, charge-sheet was submitted against the applicants for offence under Sections 323, 504 and 506 I.P.C.

3. The learned counsel for the applicants submitted that at the time of the registration of the NCR, the so-called injured were not present at the police station and their medical reports were also not produced. The injury reports were also not annexed with the application filed under Section 155(2) of Cr.P.C., and was not submitted in the

Court concerned. It was stated in the application that all the injury reports have been taken by the police. It is further contended that during investigation the contents of the NCR and general diary were copied. The statements of the complainant and statements of Achyutanand Tiwari, Vinod Tiwari and Satyendra Tiwari were recorded and spot inspection was made. There is no other relevant evidence in the entire case diary and after completion of the investigation, solely, on the oral statement of the complainant, Vinod Tiwari, Satyendra Tiwari and Achyutanand Tiwari, charge-sheet has been submitted. The learned Magistrate has taken cognizance on it.

4. It is further contended that a First Information Report was lodged by opposite party no.2 against the applicants and others on 16.02.2003 at 14:30 P.M. registered as Crime No.263 of 2003 under Section 382 I.P.C. at P.S. Badhalganj. In that case also Vinod Tiwari and Satyendra Tiwari and none else are nominated as eyewitness. It is also pending for trial as Case No.1026 of 2003 (State Vs. Ram Nagina and others) under Sections 452, 504 and 506 I.P.C., and for quashing of this, application under Section 482 Cr.P.C. has been filed. It is further contended that as per averments of the report the family members of the opposite party were assaulted but there is no medical examination report to support the allegations and regarding the medical report, a false statement was given. In fact, no such incident has taken place and report has been lodged with the mala fide intention just to harass the applicants. The so-called eyewitnesses, namely, Vinod Tiwari and Satyendra Tiwari are henchman of the complainant. The charge-sheet has been submitted without proper investigation and without sufficient evidence. The proceeding is nothing but an abuse of the process of the Court. Lastly, it is contended that opposite party no.2- complainant has died. The incident is of the year 2003 and it will be a travesty of justice, if the applicants are put to trial in such a case at this stage.

5. Per contra, the learned AGA contended that there are clear allegations of assault, abuse and threatening against the appellants-accused. As NCR was registered, an application was moved under Section 155(2) Cr.P.C., for permission to investigate the matter. Under the orders of the Magistrate, the investigation was conducted and on the basis of the evidence collected during investigation, charge-sheet has been submitted. The learned Magistrate being satisfied with the material on record, has taken cognizance on it. There is no sufficient ground to quash the charge-sheet.

6. According to allegations of the report, the complainant/ opposite party no.2 is not an eye-witness of the incident, he is a formal witness. He has lodged the report on the disclosure about the incident, made by the victims. The victims are Achyutanand Tiwari- father of the complainant and Hari Kishore Tiwari- uncle of the complainant. It is correct that there is no medico legal report, in support of the prosecution case but it is not sine quo non to constitute an offence under Section 323 I.P.C. It also appears that during course of investigation the Investigating Officer has recorded the statements of complainant- Sheetala Tiwari, Achyutanand Tiwari (the victim) and two eye-witnesses, namely, Vinod Tiwari and Satyendra Tiwari. All these witnesses have corroborated the allegations of the report and according to them, the accused persons only slapped Achyutanand Tiwari and Hari Kishore Tiwari. On the basis of the aforesaid evidence, charge-sheet has been submitted and the learned Magistrate being satisfied that prima facie case is made out, has taken cognizance and passed the summoning order.

7. It is settled law that at this stage, only prima facie case is to be seen. The genuineness of the allegations cannot be examined by this Court, at this stage. The death of the complainant also has no effect on the trial, as his status is that of a formal witness. It further transpires that just after cognizance on the charge-sheet, the applicants-accused came before this Court challenging the cognizance order and proceeding has been stayed by this Court. So the lapse of time is due to pendency of this application under Section 482 Cr.P.C., without any fault of the prosecution, so it cannot be a ground to quash the proceedings.

8. There is no sufficient material on record to demonstrate that the proceeding is an abuse of the process of the Court. So, there is no sufficient ground to quash the criminal proceedings in exercise of the powers under Section 482 Cr.P.C.

9. The application under Section 482 Cr.P.C. is devoid of merits and is hereby **dismissed**.

Order Date :- 19.10.2023

SP/-