

Court No. - 92

Case :- APPLICATION U/S 482 No. - 10323 of 2006

Applicant :- Santosh Kumar

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

Counsel for Applicant :- ,Dilip Kumar,Rajrshi Gupta

Counsel for Opposite Party :- Govt. Advocate,Manoj Kumar Singh

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Rajrshi Gupta, learned counsel for the applicant, Sri Manoj Kumar Singh, learned counsel for the opposite party no.2 and Sri Prem Prakash Tiwari, 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 Complaint Case No.821 of 2004 (Man vs. Santosh Kumar) u/S 323, 504, 506, 379 I.P.C., District- Jaunpur, pending in the court of learned Additional Chief Judicial Magistrate, Jaunpur and summoning order dated 05.05.2005 and subsequent orders where non-bailable warrants were issued against the applicants.

3. Learned counsel for the applicant submits that in the instant case, which has been filed by the son of the applicant, alleging that due to the injuries sustained by the father of the complainant on an incident dated 18.07.2003, he has died on 06.08.2004. Learned counsel for the applicant further submits that on the date of alleged incident, the applicant who was the Excise Inspector was conducting some inspection at Azamgarh, where he was posted, therefore, he was not available at the place and at the time of incident. Learned counsel for the applicant further submits that for the same incident, earlier, a complaint was filed by the father of the complainant herein himself who is the victim of the incident himself before the SC/ST Commission, which has directed an inquiry in the matter and in pursuance of which an inquiry was conducted by the Additional Superintendent of Police, Nagar, Jaunpur, wherein the applicant has submitted his detailed submission including the narration of an incident against one Sunil Kumar Gupta, on whose behest the father of the present complainant has filed the complaint against the applicant herein. Learned counsel for the applicant further submits that in the aforesaid inquiry conducted by the Additional Superintendent of Police, Jaunpur, the applicant herein was exonerated from all the allegations made against him, in view of the settlement between the applicant and

said Sunil Kumar Gupta, against whom the wife of the applicant has filed the complaint.

4. Learned counsel for the applicant further submits that the aforesaid inquiry report submitted by the Additional Superintendent of Police, Nagar, Jaunpur, dated 18.10.2003 has never been challenged by the father of the complainant herein during his lifetime. Subsequent to the death of his father, the present complaint has been filed by son of the said victim, for an incident dated 18.07.2003, alleging that the father had died due to the injuries suffered by him in the incident dated 18.07.2023. Subsequent to filing of the complaint, the statement of complaint and other witnesses who claim themselves to be the eye-witnesses of the incident, were recorded u/S 200 and 202 Cr.P.C. Thereafter, the summoning order dated 05.05.2005, has been issued against the applicant herein. On the aforesaid grounds, learned counsel for the applicant further submits that the present complainant is not an eye-witness, therefore, he cannot maintain the complaint against the applicant. The instant complaint has been filed on the basis of the earlier complaint filed by his father against the applicant herein and there is a delay of more than one year in filing the present complaint, by the complainant. Therefore, he has prayed for quashing of the entire proceedings. Learned counsel for the applicant further submits that since the applicant herein is a Government Servant, no sanction has been taken before issuing summons against the applicant herein. Therefore, learned counsel for the applicant seeks to quash the entire proceedings of the complaint case as well as the summoning order and all the subsequent orders passed by the learned Magistrate against the applicant herein.

5. Per contra, learned counsel for the opposite party no.2 submits that with regard to the said incident dated 18.07.2003, the father of the applicant has lodged the complaint to the SHO, on the date of incident itself and his medical examination was conducted and various injuries were found to have been sustained by the father of the opposite party no.2. Thereafter, investigation officer inquired into the matter on 20.07.2003 and on inquiry from various persons, he found the incident to be correct and he has taken away the father of the complainant to the police station and kept him for more than six hours and released him at 9:00 P.M., on 20.07.2003. Next day, when the father of the complainant went to inquire about the result of his complaint, the police officials thrown him out. Thereafter, he complained to the Superintendent of Police, on 22.07.2003, by registered post. The father of the complainant again complained to the I.G. Zone, Varanasi on 02.08.2003. Despite all that complaints made by the father of the applicant, no action was taken and subsequently, he succumbed to the injuries sustained

by him during the incident. Therefore, since no action has been taken by the police officials, despite repeated efforts made by the father of the complainant as well as the complainant, then, the instant complaint has been filed on 16.08.2004, by the opposite party no.2. In support of the complaint, the complainant had examined himself as well as the other three eye-witnesses of the incident, namely Rajesh Sharma, Ashok Kumar Kannoja and Basant Kumar, who have categorically supported the incident. Therefore, learned counsel for the applicant submits that on the basis of the material available before the Magistrate, the Magistrate has taken cognizance in the matter and summoned the applicant herein. Therefore, there is no illegality in the summoning order as well as all subsequent orders issued against the applicant. Therefore, he has prayed for dismissal of the instant application.

6. Learned A.G.A for State also submits that the inquiry report which has been alleged to be highly relied upon by the applicant, the said inquiry has been conducted behind the back of the father of the complainant. His statements were not recorded and the inquiry report was submitted. Therefore, the same cannot be relied upon against the complainant or his father. Therefore, learned counsel for the State submits that the learned Magistrate has summoned the applicant herein on the basis of the material available before the learned Magistrate and the plea of alibi etc., which has been taken by the applicant herein, with regard to his presence at his work place on the date of incident has to be established during the trial. Unless such plea of alibi is proved during the trial, the benefit of the same cannot be given to the applicant. In view thereof, learned counsel for the State, submits that there is no illegality for dismissal of the same.

7. Having heard the submissions made by learned counsels for the parties, this Court has carefully perused the record of the case. From the perusal of the instant complaint filed by the opposite party no.2, as per the allegations on 18.07.2003, the applicant herein has assaulted the father of the opposite party no.2 and on the same date the father of the opposite party no.2 has complaint to the said incident to the concerned police officers. His medical examination was conducted, injuries were found and thereafter, no further action was taken against the applicants by the concerned police officers in collusion with him. Thereafter, various complaints were raised by the father of the opposite party no.2, on 19.07.2003, 22.07.2003 and 02.08.2003, to the higher Police Officials. Despite that, no action was taken and the police officials subsequently told the father of the opposite party no.2, that no case will be registered as the applicant herein was allegedly doing the official duty in

the Excise Department. From the record, it is further apparent that thereafter the allegation is that due to the said injuries caused by the applicant herein, on 05.8.2004, the father of the opposite party no.2 has died. Therefore, again the applicant herein has complained regarding the same to the police officials, when no case was registered, he has filed the complaint before the learned Trial Court. The trial court after recording the statement of the opposite party no.2 as well as the three eye-witnesses, had passed the order dated 05.05.2005, summoning the applicant herein. Therefore, prima facie the summoning order has been passed by the applicant on the basis of material available before the learned Magistrate. Therefore, there is no illegality in the order dated 05.05.2005, summoning the applicant herein and the inquiry, which was allegedly conducted by the Additional Superintendent of Police, City, Jaunpur, and the inquiry report submitted by the Additional Superintendent of Police, City, Jaunpur, dated 18.10.2003, it is apparent that in the said inquiry neither the opposite party no.2 nor his father was ever given any opportunity to participate and the said inquiry report was based on the compromise between the applicant and the Manager of the Cinema Hall, which is owned by the wife of the applicant. In the said report, the said Additional Superintendent of Police himself records that during the investigation, he tried to contact the father of the opposite party no.2 and other persons but they could not be found. The said report was not before the learned Magistrate and was obtained by the applicant behind the back of the father of the opposite party no.2, in collusion with the police officials. Therefore, the said report cannot be a ground for quashing of the complaint case filed by the opposite party no.2 against the applicant. So far as plea of alibi, which has been taken by the applicant, for seeking quashing of the proceedings, the same cannot be entertained for quashing of the proceedings unless it is proved by the applicants during the trial.

8. Therefore, in the considered opinion of this Court, the instant application is devoid of merits and is hereby ***dismissed***. It is open for the applicant to take all his defences which may be available to him in accordance with law during the trial of the said complaint case.

Order Date :- 4.12.2023
Shubham Arya