

**Court No. - 92**

**Case :-** APPLICATION U/S 482 No. - 21675 of 2023

**Applicant :-** Fareed Chaudhary And 3 Others

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

**Counsel for Applicant :-** Manish Kumar Tripathi

**Counsel for Opposite Party :-** G.A.

**Hon'ble Anish Kumar Gupta,J.**

1. Heard Sri Manish Kumar Tripathi, learned counsel for the applicants, Sri Saurabh Pandey, learned counsel for the opposite party no.2 and Sri Satish Chaudhary, learned AGA appearing for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of charge sheet dated 22.01.2021 as well as cognizance/summoning order dated 17.02.2022 in Case No. 563 of 2022 (State vs. Fareed Chaudhary and others), arising out of Case Crime No. 435 of 2019, under Section 420 IPC, P.S. Tronika City, District Ghaziabad, pending in the court of Additional Civil Judge (J.D.) No. 4, Ghaziabad.

3. Learned counsel for the applicants submits that in the instant case, charge sheet has been filed against them under Section 420 IPC, however no offence under Section 420 IPC is made out. Learned counsel for the applicants further submits that the instant case relates to the breach of agreement to sell executed between the parties, for which civil remedies are available, therefore, the criminal prosecution on behalf of opposite party no.2 is uncalled for. Therefore, learned counsel for the applicants has prayed for quashing of the entire proceeding of the said case.

4. Per contra, the learned counsel for opposite party no.2 submits that at the time of execution of the agreement to sell itself, the other partner of the firm has already expired without disclosing the fact that the applicants have induced the opposite party no.2 to part with the consideration of the said agreement to sell. Therefore, prima facie offence under Section 420 Cr.P.C. has been committed by the applicants herein and no interference is called for by this Court .

5. Learned AGA for the State submits that the instant application involves disputed questions of fact, which cannot be determined while exercising the jurisdiction under Section 482 Cr.P.C., for which the trial is the appropriate remedy. The proceedings cannot be quashed in the cases involving the

disputed questions of fact. In view thereof, he has prayed for rejection of the instant application.

6. Having heard the rival submissions made by learned counsel for the parties, this Court has carefully perused the record of the case, FIR, the charge sheet as well as the summoning order and the submissions made by learned counsel for the applicants involves disputed questions of fact and there is a dispute with regard to proper execution of agreement to sell by the competent partners of the firm. Further learned counsel for the opposite party no.2 submitted that one of the partner of the said firm has already expired before the execution of the agreement to sell, what are the amount given and what were the dues, everything is disputed in this case that has to be determined by the competent court, which cannot be decided in exercise of jurisdiction under Section 482 Cr.p.C.

7. In view thereof, since the instant matter involves disputed questions of fact, the same cannot be entertained, the instant application is devoid of merit and is hereby **dismissed**.

**Order Date :- 8.11.2023**

Ashish Pd.