

Court No. - 90

Case :- APPLICATION U/S 482 No. - 21953 of 2023

Applicant :- Shambhu Nath And Another

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

Counsel for Applicant :- Santosh Kumar,R.B. Singh

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Pathak,J.

1. Heard learned counsel for the applicants, learned AGA and perused the record.

2. The present applicants have invoked the inherent power of this Court under Section 482 CrPC beseeching the quashing of order dated 19.9.2011 passed by Judicial Magistrate-IV, Allahabad in Case Crime No. 106 of 1993 (State Vs. Shanker @ Bhola and others), under Section 504, 506, 427, 382 and 411 IPC, Police Station Baharia, District Allahabad as well as entire criminal proceeding of Case No. 124 of 2004.

3. As per FIR version, on the date of incident i.e. 20.7.1993 at about 7 am, the accused have demolished the wall of house of the first informant constructed over plot No. 250 and removed the bricks and door of the house through tractor. They abused, thrashed and threatened of life to the informant. After due investigation, the Investigating Officer has submitted charge sheet against the accused (applicants herein) including one Shankar alias Bhola, who happens to be the father of the present applicants. During pendency of the trial, Shankar alias Bhola has died. Learned trial court, vide order dated 29.9.1997, has framed charges against the accused under Sections 504, 506, 427 and 382 IPC. At later stage, prosecution has moved an application under Section 216 CrPC for framing of additional charge under Section 411 IPC with an averment that the bricks which were stolen from the spot have been recovered, therefore, case under Section 411 IPC is made out against the accused. Learned trial court, after considering the material available on record, has allowed the application under Section 216 CrPC vide it's order dated 19.9.2011 and fixed date for framing of charges under Section 411 IPC, which is under challenge before this Court.

4. It has been submitted by the learned counsel for the applicants that civil litigation has illegally been dragged into criminal proceeding. The plot No. 250, whereupon the first informant is

claiming to be the existence of his house, basically belongs to the present applicants, who are the recorded tenure holder in the revenue record. It is further submitted that dispute relating to revenue court has been decided in favour of the present applicants. It is further submitted that learned trial court has illegally entertained the application under Section 216 CrPC for the purpose of framing of additional charge whereas separate application for this purpose is not maintainable in the eye of law.

5. Per contra, learned AGA has vehemently opposed the submissions as raised by the learned counsel for the applicants and supported the impugned order dated 19.9.2011 passed by the trial court to frame additional charge under Section 411 IPC. It is contended that the application moved on behalf of the prosecution is an information brought to the knowledge of court and on the basis thereof charge under Section 411 IPC has been ordered to be framed after considering the material available on record, therefore, there is no illegality, perversity or ambiguity in the order impugned which may warrant indulgence of this Court in exercise of inherent jurisdiction under Section 482 CrPC.

6. Having considered the rival submissions advanced by the learned counsel for the applicants as well as learned AGA and perusal of record, it is manifested that the learned trial court has entertained the application under Section 216 CrPC moved on behalf of the prosecution as a piece of information and, accordingly, acted upon it and proceeded with the matter to frame additional charge under Section 411 IPC after considering the material available on record. While passing the order dated 19.9.2011, the learned trial court has referred the recovery memo wherein bricks were shown to be recovered from the spot on the disclosure made by one of the co-accused namely Shankar (father of the present applicants), however, he is reported to have died at the later stage of trial. Learned counsel for the applicant has tried to question the recovery of the alleged bricks which were allegedly stored in front of Junior High School situated far away from the spot in question. He has also tried to challenge/question the process of recovery of the alleged bricks and its relevance attributing to the incident in question. All the questions, which are being tried to be raised by the learned counsel for the present applicants with respect to the process of recovery of the bricks and its identity being the same bricks which were allegedly recovered from the spot in question, is a matter of trial which can be adjudicated upon more appropriately by the trial court after appraising the evidence on record. This Court is not expected to

conduct a mini trial to examine the questions as raised by the learned counsel for the applicants. Learned trial court, vide order impugned dated 19.9.2011, has fixed a date for framing of charge under Section 411 IPC owing to recovery of bricks which were allegedly stolen after the demolished house on the date of occurrence. Entire trial is still pending to be concluded, therefore, at this stage, any observation made by this Court in this regard will affect the merits of the trial.

Apart from that applicants have assailed the order dated 19.9.2011 at a belated stage on 8.6.2023. However, no cogent and satisfactory reason has been assigned for such inordinate delay. In this conspectus, as above, I do not find any justifiable ground to interfere in the order impugned dated 19.9.2011 passed by the trial court in exercise of inherent jurisdiction of this Court under Section 482 CrPC. There is neither any abuse of the process of Court in passing order impugned for framing of additional charge nor there is any justifiable ground to pass an order to secure the ends of justice, in exercise of inherent power in the instant matter.

7. Resultantly, instant application under Section 482 CrPC, being misconceived and devoid of merits, is dismissed with no order as to the cost.

8. Before parting with the case, learned counsel for the applicants has urged this Court to issue a direction for expeditious disposal of the trial pending since 1993 despite the fact that applicants are running from pillar to post but, till date, even evidence of the prosecution has not been concluded due to non-cooperation of the prosecution side, who are still keeping the matter protracted just to harass the present applicants.

9. Considering the peculiar facts and circumstances of the instant matter wherein the case is pending consideration with respect to the incident allegedly took place on 20.7.1993, it would be befitting to issue a direction for expeditious disposal of the trial.

10. Accordingly, learned trial before whom aforesaid trial is pending consideration is hereby directed to take all appropriate measures to ensure the presence of the prosecution witnesses and conclude the trial expeditiously, preferably, within a period of one year from the date of production of a certified copy of this order.

Order Date :- 27.10.2023

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