

Court No. - 91

Case :- APPLICATION U/S 482 No. - 25430 of 2023

Applicant :- Suresh Kumar Gupta

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Santosh Kumar Shukla, Neeraj Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State- opposite party and perused the record.

2. This application under Section 482 Cr.P.C. has been filed by the applicant with the prayer to quash the judgement and order dated 30.05.2023 passed by Additional Session Judge, Room No.1, Bhadohi at Gyanpur in Criminal Revision No.113 of 2022 (Jitendra Kumar Jaiswal and others Vs. State of U.P. & others) and further prayer to stay the proceedings of the aforesaid case has been made.

3. It is submitted by the learned counsel for the applicant that initially an NCR No.01/2022, under sections 323, 504, 427 IPC was registered and an application under section 155(2) Cr.P.C. was moved which was allowed vide order dated 9.3.2022 and investigation was carried out. After investigation I.O. submitted charge sheet for the offence under sections 323, 504, 427 IPC and cognizance thereof was taken by the Magistrate concerned vide order dated 24.8.2022 against which a revision was filed which was heard and decided vide order dated 30.05.2023 whereby order dated 24.8.2022 was set-aside and the Magistrate concerned was directed to pass a fresh order in the light of section 2(d) Cr.P.C. The main contention of learned counsel for the applicant is that as

in the case of NCR on the application under section 155(2) Cr.P.C., investigation has been carried out and the charge sheet has been submitted on which cognizance has been taken. Therefore, the case should have been treated as a State case. Reliance has been placed upon the judgement of Apex Court in the case of **Atmaram Yadav and Others vs. State of U.P. and Another 2022 0 Supreme(All) 666.**

4. Learned A.G.A. opposed the prayer and submitted that the order passed by the learned revisional court is yet to be complied with and the concerned Magistrate has to pass the order, however, under section 460 Cr.P.C., the cognizance order does not come within the purview of material irregularity which vitiates the proceedings :-

“460. Irregularities which do not vitiate proceedings.-If any Magistrate not empowered by law to do any of the following things, namely:-

(e) to take cognizance of an offence under clause (a) or clause (b) of sub-section (1) of section 190;”

5. In any view of the matter, from the perusal of the record and the impugned proceedings, it is found that there is no such glaring abuse of court's process which may justify to invoke its inherent power provided under section 482 Cr.P.C. to interference in the impugned order. In view of above, the prayer for quashing the impugned order is refused.

6. The present application under Section 482 is devoid of merit and is accordingly **dismissed.**

Order Date :- 2.11.2023

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