

Court No. - 88

Case :- APPLICATION U/S 482 No. - 27117 of 2023

Applicant :- Durgesh And Another

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Sumit Jaiswal

Counsel for Opposite Party :- G.A., Krishna Kumar Shukla

Hon'ble Sanjay Kumar Singh, J.

1-Heard learned counsel for the applicants, Mr. Ajeet Singh, learned Additional Government Advocate 1st for the State of U.P./opposite party no.1 and learned counsel for the opposite party no.2.

2-This application under Section 482 Cr.P.C. has been filed by the applicants to quash the summoning order dated 15.11.2022 as well as proceedings of Complaint Case No. 1161 of 2022 (Vinita Devi Vs. Nitesh and Others), under Sections 323, 504, 506, 354-A, 509 and 383 I.P.C., Police Station-Aliganj, District-Bareilly, pending in the court of learned Judicial Magistrate-II, Aonla, Bareilly.

3-Brief facts of the case which are required to be stated are that the opposite party no.2 filed a complaint against Nitesh as well as applicants (Durgesh and Phool Singh) alleging inter alia that on 07.08.2022 at about 10:15 in the morning, Nitesh called her son and asked him that 'where are you, why did you not come, then her son replied that you have not paid his salary for two months, therefore, he will not come'. On hearing this, Nitesh became enraged and started abusing on the phone and after about 15-20 minutes, Nitesh took his brother Durgesh and Phool Singh with him and barged into her house by pushing and kicking the doors. As soon as they entered into the house, they started beating her son with sticks and gun butts. Upon hearing his screams, when she, who was doing household work in the adjacent room, came to save him, the accused persons also beaten her. They also did obscene acts with her and tore her blouse outraging her modesty.

4-It is argued by learned counsel for the applicants

that the complainant without any reference, on her own got herself medically examined on 19.08.2022 in Maharana Pratap District Combined Hospital, Bareilly. Her injuries are simple in nature. From the statements of complainant and witnesses, namely, Virendra @ Viresh, Suman Kumari, Ajit Kumar and Rakesh Kumar, it appears that they have given tutored statement. The learned Magistrate took cognizance without considering legal aspect of the matter. The incident has not taken place in the manner as alleged by the complainant. In fact complainant's son after taking advance money started working carelessly and despite making best effort by Nitesh did not do his job seriously. Much emphasis has been given by contending that complainant's son neither resumed his duty nor return money. The applicants have been falsely implicated with a view to grab advance money. The prosecution witnesses are interested witnesses. Lastly, it is submitted that no offence is made out against the applicants. Under the facts and circumstances of the case, impugned summoning order and proceedings against the applicants are liable to be quashed. He placed reliance upon judgment dated 13.05.2009 of the Hon'ble Apex Court in the case of Keki Hormusji Gharda and others Vs. Mehervan Rustom Irani and another passed in Criminal Appeal No.1015 of 2009 and another judgment dated 08.03.2021 of the Hon'ble Apex Court in the case of Krishna Lal Chawla and others Vs. The State of U.P. and another passed in Criminal Appeal No. 283 of 2021.

5-Per contra, learned Additional Government Advocate 1st for the State as well as learned counsel for the opposite party no.2 refuting the submissions advanced on behalf of the applicants submitted that considering the allegations made in the complaint as well as statements of the complainant and witnesses under Sections 200 and 202 Cr.P.C. respectively, the cognizable offence against the applicants is made out. The criminal proceedings against the applicants cannot be said to be abuse of the process of the Court. Hence, this application is liable to be dismissed.

6-After having heard the submissions of learned counsel for the parties and perusing the entire record, I find that the grounds taken in the application reveal that many of them relate to disputed question of fact. At the stage of summoning the accused, the court below is not required to go into the merit and demerit of the case. Genuineness or otherwise of the allegations cannot be even determined at the stage of summoning the accused. The prayer for quashing of criminal proceeding on behalf of co-accused Nitesh has already been refused by the co-ordinate bench vide order dated 24.08.2023 in an Application under Section 482 Cr.P.C. No.27763 of 2023. Considering the impugned order dated 15.11.2022, I do not find any illegality in the same. So far as the judgments relied upon on behalf of the applicants are concerned, there is no issue regarding the proposition of law laid down by the Apex Court but the same are not helpful to the applicants on the facts of this case. This Court is of the view that every case turns on its own facts and even a slight difference between the facts of two cases may alter the entire aspect of the matter in conclusion of both the cases.

7-The appreciation of evidence is a function of the trial court. This Court in exercise of power under Section 482 Cr.P.C. cannot assume such jurisdiction and put to an end to the process of trial provided under the law. It is also settled by the Apex Court in catena of judgments that the power under Section 482 Cr.P.C. at pre-trial stage should not be used in a routine manner but it has to be used sparingly, only in such an appropriate cases, where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceedings or where allegations made in complaint and the materials relied in support of same, on taking their face value and accepting in their entirety do not disclose the commission of any offence against the accused. Power under Section 482 of the Code of Criminal Procedure cannot be exercised where the allegations are required to be proved in court of law. The disputed questions of facts and defence of the accused cannot be taken into consideration at this

pre-trial stage, which can be more appropriately gone into by the trial court at the appropriate stage.

8-This Court does not find that this case fall in a categories as recognized by the Apex Court for quashing the criminal proceeding of the trial court at pre-trial stage. Considering the facts, circumstances and nature of allegations against the applicants in this case, the cognizable offence is made out. At this stage it would not be appropriate to adjudge whether the case shall ultimately end in conviction or not. Only prima facie satisfaction of the Court about the existence of sufficient ground to proceed in the matter is required. The impugned criminal proceeding under the facts of this case cannot be said to be abuse of the process of the Court. There is no good ground to invoke inherent power under Section 482 Cr.P.C. by this Court.

9-The relief as sought by the applicants through the instant application is hereby refused.

10-This application under Section 482 Cr.P.C. lacks merit and is, accordingly, **dismissed**.

Order Date :- 19.10.2023
Shubham