

Court No. - 92

Case :- APPLICATION U/S 482 No. - 31598 of 2009

Applicant :- Suhail Ahmad And Others

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

Counsel for Applicant :- A.K. Srivastava, Aditya Kumar Tripathi, Arun Kumar, Bal Mukund Singh, Shri Prakash Mishra

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Anish Kumar Gupta, J.

1. Learned counsel for the applicants has filed a rejoinder affidavit to the counter affidavit filed on behalf of the State, today in Court, which is taken on record.

2. Heard Sri Bal Mukund Singh, learned counsel for the applicants and Sri Prem Prakash Tiwari, learned A.G.A. for the State.

3. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the charge-sheet dated 30.06.2008 and the entire proceedings of Criminal Case No. 1571 of 2009 (State of U.P. vs. and Others), arising out of Case Crime No.122 of 2008 u/S 323, 504 I.P.C. and Section 3(1)X SC/ST Act, P.S.- Kotwali, District- Etawah, pending in the court of learned Chief Judicial Magistrate, Etawah.

4. Learned counsel for the applicants submits that the opposite party no.2 was a driver in the UPSRTC at Etawah Depot. In January, 2008, the opposite party no.2 has requested for allotment of a particular bus for driving. When, such request was not entertained, he made open allegations against the Station In-charge, Sri S.N. Tiwari, who is the applicant no.3 herein, that the allotment of bus is being done by the Station In-charge, by taking bribe. When the applicant no.2 herein restrained him from making such baseless allegations, the opposite party no.2 infuriated and shouted. Since, the opposite party no.2 made a baseless allegation against applicant no.3 in public view the applicant no.2, reported the same to the applicant no.1, Assistant Regional Manager (A.R.M.). Then, the applicant no.1 issued notice dated 01.02.2008 to opposite party no.2 to substantiate the allegations, which he has made against the applicant no.3. In pursuance thereof, the opposite party no.2 appeared on 02.02.2008 before the applicant no.1, however, could not substantiate the allegations levelled by him against applicant no.3. Subsequently, when the disciplinary proceedings

against the opposite party no.2 were initiated for making baseless allegations against the superior officers, without there being any substance, then, he has lodged the present F.I.R. against the applicants herein. Learned counsel for the applicants submits that on the date of incident, the applicant no.2 was on casual leave, since 16.02.2008 till 19.02.2008. However, in the present F.I.R., lodged on the basis of an application u/S 156(3) Cr.P.C., by the opposite party no.2, he has levelled allegations against the applicant no.2 also. Since, the applicant no.2 was on casual leave, which has been supported by the Annexure 'R.A.-4', to the rejoinder affidavit filed today in Court, wherein leave from 16.02.2008 to 19.02.2008 was permitted to the applicant no.2 and from the Attendance Register also, on the aforesaid date, the casual leave has been marked with regard to the applicant no.2. Therefore, learned counsel for the applicants submits that the F.I.R. is nothing but a false and fabricated case, registered by the opposite party no.2, levelling baseless allegations due to the disciplinary inquiry initiated against the opposite party no.2 by the applicant no.1. Therefore, learned counsel for the applicants submits that the instant F.I.R. is nothing but an abuse of process of law and an attempt by the opposite party no.2, to humiliate the superior officers, who have initiated the disciplinary action against the opposite party no.2. If such complaints are permitted, then, no officer can discharge his duty fearlessly. Therefore, learned counsel for the applicants has prayed for quashing of the entire proceedings of the instant case against the applicants herein.

5. In the instant case, notice was issued to opposite party no.2, vide order dated 03.12.2009. In pursuance of the said order, the notice was duly served on the opposite party no.2, through the Sub-inspector of P.S.- Kotwali, District- Etawah. However, despite service of notice, he has not put in appearance before this Court.

6. On the basis of the material available record, which has been annexed alongwith the application as well as the rejoinder affidavit, with regard to the applicant no.2 that he was on leave on the date of incident i.e., 18.02.2008, therefore, learned counsel for the State submits that the allegations against the applicant no.2 cannot be relied upon on the basis of the clear evidence that he was not present at the place of incident on the date of incident. However, learned counsel for the State submits that so far as against the other two applicants, the case cannot be quashed.

7. Having heard the submissions made by learned counsels for the parties, this Court has carefully gone through the record of the case. From the record of the case, it is apparent that the

opposite party no.2 had made the allegations of bribe etc., against the applicant no.3. Thereupon, the applicant no.2 has reported about the same to the applicant no.1, upon which applicant no.1 had issued notice to the opposite party no.2 and has called for explanation and asked him to substantiate the charges levelled by him, in open, against the applicant no.3. When the opposite party no.2 failed to substantiate the charges against the applicant no.3, then, the disciplinary proceedings were initiated against the opposite party no.2 by the applicant no.1. Therefore, the instant F.I.R. has been lodged by the opposite party no.2, as a counterblast to the disciplinary proceedings initiated by the applicant no.1 against the opposite party no.2. The falsity of the instant F.I.R. is apparent from the fact that the F.I.R. alleges that the applicant no.2 was also present on the date of incident and had assaulted and abused the opposite party no.2. However, from the record, which has been produced before this Court, the leave application of the applicant no.2 was allowed and he was on leave from 16.02.2008 to 19.02.2008 and in his Attendance Register also, it has been marked that he was on casual leave from 16.02.2008 to 19.02.2008. In such circumstances, it is improbable for the applicant no.2 to be present at the place of incident. Therefore, no offence could have been alleged against the applicants. Since, the allegations, as made in the F.I.R., are found to be false with regard to the applicant no.2, therefore, since the allegation against the applicant nos. 1 & 3 is also made during the same incident, therefore, since the allegations against the applicant no.2 is false, then, the entire prosecution story appears to be false, applying the maxim *falsus in uno, falsus in omnibus*.

8. Therefore, in the considered opinion of this Court, the instant case is nothing but a counterblast proceedings initiated by the opposite party no.2 herein against the superior officers, who have initiated disciplinary proceedings against the opposite party no.2 and amounts to the abuse of process of law by opposite party no.2 with ulterior motive. Therefore, the instant application is **allowed** and the proceedings of the charge-sheet dated 30.06.2008 and the entire proceedings of Criminal Case No. 1571 of 2009 (State of U.P. vs. and Others), arising out of Case Crime No.122 of 2008 u/S 323, 504 I.P.C. and Section 3(1)X SC/ST Act, P.S.- Kotwali, District- Etawah, pending in the court of learned Chief Judicial Magistrate, Etawah, are hereby **quashed**.

Order Date :- 11.12.2023
Shubham Arya