

Court No. - 87

Case :- APPLICATION U/S 482 No. - 28863 of 2022

Applicant :- Dharmendra Kumar And 4 Others

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

Counsel for Applicant :- Pankaj Kumar Tyagi

Counsel for Opposite Party :- G.A.,Sujeet Kumar Rai

Hon'ble Neeraj Tiwari,J.

1. Heard learned counsel for the applicants, learned A.G.A. for the State and Sri Sujeet Kumar Rai, learned counsel for the opposite party No. 2.

2. The present application u/s 482 Cr.P.C. has been filed seeking quashing of charge sheet dated 28.08.2020, cognizance/summoning order dated 28.09.2020 as well as entire proceeding of Case No. 4662 of 2020(State Vs. Dharmendra Kumar and others), under Sections 420, 467, 468, 471, 490 I.P.C , Police Station Shikarpur, District Bulandshahar.

3. Learned counsel for the applicants submitted that cognizance order has been passed on set proforma without application of mind and further, cognizance was also taken under Section 490 IPC, in which, no charge sheet has been filed. From the perusal of Section 490 IPC, it is apparently clear that it is not concerned with the present matter, therefore, summoning order is bad and liable to be quashed. In support of his submission, he placed reliance on the judgment of the Supreme Court in the case of **Megh Nath Gupta & another Vs. State of U.P. and another, 2008 (62) ACC 826** as well as Single Judge judgment and order passed by this Court in the case of **Ankit Vs. State of U.P. and another [(2009) (9) ADJ 778]** on an **Application No. 19647 of 2009** filed under Section 482 CrPC on 15.10.2009. He, thus, argues that the summoning order is liable to be set aside in view of the well settled law of this Court. He also placed before me several orders passed by this Court whereby similar orders have been set aside by this Court and the matters have been remanded before the Trial Court for fresh orders in accordance with law.

3. Sri Sri Sujeet Kumar Rai, learned counsel for the opposite party No. 2 could not dispute the aforesaid facts.

4. A perusal of the summoning order impugned in the present proceedings clearly demonstrates that there was no application of mind whatsoever prior to the passing of the summoning order, which has been repelled by this Court in various judgments.

5. In view of the categorical pronouncements of this Court, the impugned charge sheet dated 28.08.2020 and cognizance/summoning order dated 28.09.2020 are set aside and the matter is remanded before the concerned Court below for passing fresh orders of summoning and cognizance if it deems fit within a period of four weeks from the date of production of certified copy of this order.

6. Consequently, the application is **allowed** in part and charge sheet dated 28.08.2020 and cognizance/summoning order dated 28.09.2020 set aside in terms of the order passed above.

7. Let a copy of this order be sent to the concerned Court below for its compliance as stated above.

Order Date :- 17.11.2023

ADY