

**Court No. - 88**

**Case :-** APPLICATION U/S 482 No. - 29785 of 2023

**Applicant :-** Keshav And 2 Others

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

**Counsel for Applicant :-** Geetam Singh

**Counsel for Opposite Party :-** G.A.,Nirbhay Singh

**Hon'ble Sanjay Kumar Singh,J.**

1-Heard learned counsel for the applicants, learned Additional Government Advocate 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 15.09.2022 as well as proceedings of Complaint Case No. 26 of 2021 (Smt. Dhanwanti Vs. Keshav and others), under Sections 354, 504, 506 I.P.C. and Section 7/8 POCSO Act, Police Station-Amapur, District-Kasganj, pending in the court of learned Special Judge POCSO Act, Kasganj.

3-Brief facts of the case which are required to be stated are that on 01.09.2021, opposite party no.2, who is mother of victim aged about 11 years, moved an application under Section 156(3) Cr.P.C. against the applicants with regard to an incident which took place on 24.05.2021 for the alleged offence under Sections 354-B, 504, 506 I.P.C. and Section 7/8 POCSO Act. The said application was treated as complaint and after recording statements under Section 200 Cr.P.C. of the complainant dated 08.12.2021 and statement of witnesses namely, Sangeeta and Subedar under Section 202 Cr.P.C. on 10.12.2021 and 04.04.2022, summoned the applicants to face trial vide order dated 15.09.2022, which is the subject matter of challenge in the present application.

4-It is argued by learned counsel for the applicants that Smt. Satyawati-wife of applicant no.3 lodged F.I.R. on 29.05.2021 under Sections 354, 504, 427

I.P.C. against the husband of opposite party no.2, therefore, opposite party no.2 in order to settle her personal score moved an application dated 01.09.2021 against the applicants on the false facts. It is also submitted that on 22.07.2021, opposite party no.2 had also moved an application under Section 166A (c) Cr.P.C., which was rejected vide order dated 06.04.2022. Lastly, it is submitted that proceedings of this case is nothing but a malicious prosecution, therefore, the same is liable to be quashed by this Court.

5-Per contra, learned Additional Government Advocate for the State as well as learned counsel for 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 statement of the complainant and witnesses under Sections 200 and 202 CrPC 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 the learned counsel for the parties and perusing the entire record, I find that in the F.I.R. dated 29.05.2021 of wife of applicant no.3 as well as in the application under Section 156(3) Cr.P.C. dated 01.09.2021 of opposite party no.2, the date of incident has been shown as 24.05.2021. The case of opposite party no.2/complainant is that after the incident an application was given to lodge F.I.R., but Police did not lodge her F.I.R. and thereafter application was also sent to Superintendent of Police by registered Post, but no action was taken on the same, thereafter, she approached the concerned Court below through an application under Section 156(3) Cr.P.C against the applicants. So far as application dated 22.07.2021 of opposite party no.2 as pointed from the side of applicants is concerned, I find that the same was dismissed vide order dated 06.04.2022 of Judicial Magistrate, Kasganj on non prosecution. 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.

7-This Court is of the view that 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 :-** 17.10.2023

Kashifa