

Court No. - 88

Case :- APPLICATION U/S 482 No. - 28342 of 2023

Applicant :- Sanjeev Kataria And 3 Others

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

Counsel for Applicant :- Sandeep Pandey, Devesh Tripathi

Counsel for Opposite Party :- G.A., Namit Srivastava, Sarthak Verma

Hon'ble Sanjay Kumar Singh, J.

1-Heard learned counsel for the applicants, Mr. Vivek Dhaka, learned Additional Government Advocate assisted by Mr. Kamal Kumar, learned Brief Holder 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 charge-sheet dated 25.01.2023, summoning order dated 08.06.2023 and proceedings of case no. 2386 of 2023 arising out of case crime no. 40 of 2022, under Sections 323, 354-A, 308, 504, 506 and 324 I.P.C., Police Station Pallavpuram, District Meerut pending in the court of Additional Chief Judicial Magistrate, Meerut.

3-The brief facts of the case which are required to be stated are that regarding an incident dated 12.01.2022, a first information report of the opposite party no.2 through an application under Section 156(3) Cr.P.C. dated 25.01.2022 was registered on 09.02.2022 against the applicants for the offence under Sections 323, 354, 354(क), 307, 308, 376, 511, 504 and 506 I.P.C. with the allegations *inter-alia* that on 12.01.2022, she along with her father Rajendra Singh and driver Charan Singh was going to Haridwar from Delhi by her car bearing registration no. DL-8-CAV-9681. She had some work in Vinayak Vidhyapeeth University, so she asked her driver to go towards university. On her way, the accused-applicants, by overtaking her car, stopped them and thereafter accused-applicants namely Sanjeev Kataria, Gaurav Kataria and Chetan Mehra, with a

common intention, started abusing and assaulting her and her father. Accused-Jaiender Kataria also assaulted her by kicks and fists. F.I.R. further alleges that the accused-applicant Gaurav Kataria, with bad intention, torn her clothes and also molested her sexually. When her father and driver tried to rescue her, they also assaulted them by knife and sticks and also tried to strangle them whereby they have received injuries.

4-After culmination of investigation, charge-sheet has been submitted against the applicants on 25.01.2023, on which the learned Magistrate took cognizance on 20.02.2023 and summoned the applicants to face trial.

5-Learned counsel for the applicants submits that the applicants are innocent and has been falsely implicated in this case. The applicant no. 1, 2, 3 and 4 namely Sanjeev Kataria, Jaiendra Kataria, Gourav Kataria and Chetan Mehra are husband, father-in-law and brothers-in-law of the opposite party no. 2. It is next submitted that at the day and time of the incident, applicants were not present at the spot. The opposite party no. 2 has not received injuries in the manner as alleged by the prosecution. In fact she received injuries on account of falling from the roof. It is also submitted that as per the prosecution version, role of causing injuries has been assigned to four persons whereas the injuries are simple in nature. The injury report dated 12.01.2022 of the opposite party no.2 issued by P.L.Sharma District Hospital, Merrut is nothing but a manipulated document. In fact opposite party no.2 was medically examined on 14.01.2022 in Sanjivani Clinic, Delhi, in which it is mentioned that "the injury caused by falling from roof". The applicant no. 2-Jaiender is suffering from kidney disease. There are contradictions in the averments of the victim in an application U/s 156(3) Cr.P.C. and in the statement under Section 161 Cr.P.C. Lastly it is submitted that university was remain closed w.e.f. 10.01.2022 to 16.01.2022 and no such incident took place, hence, no offence is made out against the applicants.

6-Per contra, learned Additional Government Advocate for the State refuting the submissions advanced on behalf of the applicants submitted that upon perusal of F.I.R. and on the basis of the allegations made therein as well as material against the applicants, as per prosecution case, 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.

7-Learned counsel for the opposite party no. 2 reiterating the arguments advanced on behalf of the State submits that during investigation, the opposite party no. 2-Pooja D/o Rajender Singh was medically examined on 12.01.2022 in P.L.Sharma District Hospital, Meerut. As per her medical report, five injuries were found on her body, out of which injury no. 1 was incised wound.

8-Having examined the matter in its totality, I find that the opposite party no.2 in the F.I.R. as well as in her statements under Section 161 and 164 Cr.P.C. made serious allegations of outraging her modesty by disrobing her as well as pressing her breast and molesting her private parts apart from causing injury. Out of five injuries of the opposite party no.2, the injury no. 1 was found incised wound. Dr. Pradeep Kumar who had examined the opposite party no.2 in his statement has also stated that opposite party no.2 had received five injuries, out of which injury no.1 was caused by sharp edged weapon. The grounds taken in the application reveal that many of them relate to disputed question of fact. 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 an end to the process of trial provided under the law. It is well 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 First Information Report or charge-sheet 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. 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.

9-At the stage of taking cognizance of the case and 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.

10-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.

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

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

Order Date :- 16.10.2023

Saurabh