

Court No. - 88

Case :- APPLICATION U/S 482 No. - 28816 of 2023

Applicant :- Ummed Ali Tyagi

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Murli Dhar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

1-Heard learned counsel for the applicant and learned Additional Government Advocate for the State of U.P./opposite party no. 1.

2-By means of this application, applicant-Ummed Ali Tyagi has preferred this application under Section 482 Cr.P.C. with a prayer to issue a direction to the learned Additional Chief Judicial Magistrate-1st, Muzaffarnagar to pass a summoning order to the accused in Complaint Case No. 10451/90 of 2021 (*Ummed Ali Tyagi vs. Subhan & Jaybeer*) pending before him.

3-It is submitted by learned counsel for the applicant that the application under Section 156(3) Cr.P.C. dated 07.07.2021 of the applicant seeking direction to lodge a first informant report against opposite party nos. 2 and 3 namely Shubham and Jaybeer has been treated as a complaint vide order dated 12.08.2021 but till date, opposite party nos. 2 and 3 has not been summoned, therefore, this Court in exercise of powers under Section 482 Cr.P.C. may issue a direction to the Magistrate concerned to summon the opposite party nos. 2 and 3 under Section 204 Cr.P.C.

4-On the other hand, learned A.G.A. opposed the submission of learned counsel for the applicant by contending that the process under Section 204 Cr.P.C. can be issued by the Magistrate concerned only, if he finds that prima-facie offence is made out. This Court, at this stage, cannot force the Magistrate to summon the opposite party nos. 2 and 3 to face trial. It is also submitted that the instant application

has been moved by the applicant with an ulterior motive as this is the third application under Section 482 Cr.P.C. with regard to dispute between the parties concerned.

5-Having heard the submissions of learned counsel for the parties and perusing the record, I find substance in the submissions of learned A.G.A. that passing an order under Section 203 Cr.P.C. or issuance of summon under Section 204 Cr.P.C. is domain of the Magistrate concerned. The relief as sought for by means of this application cannot be granted by this Court.

6-The application is misconceived, and is accordingly, ***dismissed***.

7-Office is directed to send a copy of this order to the opposite party nos. 2 and 3 as well as to the concerned court below within a week for necessary information.

Order Date :- 28.11.2023
Saurabh