

Court No. - 92

Case :- APPLICATION U/S 482 No. - 18362 of 2010

Applicant :- Vinay Kumar Umar And Anothers

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

Counsel for Applicant :- Sanjay Kumar Singh, Pankaj Kumar Asthana

Counsel for Opposite Party :- Govt. Advocate, Kandarp Srivastava, Kaustubh Srivastava, Yatharth Srivastava

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Pankaj Kumar Asthana, learned counsel for the applicants and Sri Prem Prakash Tiwari, learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the summoning/cognizance order dated 16.12.2009 and the entire proceedings in Case No. 8221 of 2009 (Tribhuwan Singh vs. Vinay Kumar vs. and Others), arising out of Case Crime No. 153 of 2007 u/S 323, 325, 504, 506, 394, 356, 452 I.P.C., P.S.- Kotwali City, District- Mirzapur, pending in the court of Chief Judicial Magistrate, Mirzapur.

3. Learned counsel for the applicants submits that instant criminal proceedings have been filed against the applicants herein on the basis of false and fabricated facts and due to some property dispute between the Late Kishan Chand Seth and the opposite party no.2, to which the applicant no.1 was looking after the said litigation on behalf of the said Sri Kishan Chand Seth Learned counsel for the applicants has vehemently argued that the injury on the right ankle, which has been allegedly sustained by the informant on his right ankle was an injury sustained by him prior to the date of the incident, for which he has already got examined himself on 24.01.2007 and subsequently on 08.02.2017 and 15.02.2007 and subsequently for taking benefit of the said injury he has filed the instant prosecution against the applicants. He has relied upon the the first copy of the register of the hospital and x-ray reports and the certificate issued with regard to the x-ray conducted of said Tribhuwan Singh on 24.01.2007.

4. Learned counsel for the applicants further submits that the Investigation Officer after due investigation has submitted the final report, having regard to the aforesaid medical record of the injury of prior in time. Subsequently, this protest petition was

filed by the opposite party no.2 on which the learned Magistrate has taken cognizance against the applicants herein and have summoned them for trial. Therefore, learned counsel for the applicants has prayed for quashing of the summoning order dated 16.12.2009 as well as the entire proceedings of the Case No. 8221 of 2009 (Tribhuwan Singh vs. Vinay Kumar vs. and Others) u/S 323, 325, 504, 506, 394, 356, 452 I.P.C., against the applicants herein.

5. Per contra, learned counsel for the opposite party no.2 submits that the Investigation Officer has relied upon the Registration No. 3744 dated 24.01.2007, wherein the x-ray was conducted for the right ankle and in the summoning order, the learned Magistrate has categorically taken note of the aforesaid fact and found that Receipt No. 3744 of 24.01.2007, was in the name of some Nagendra Singh, aged about 11 years, and therefore, final report was rejected and on protest petition the applicants herein have been summoned. Therefore, the veracity of the averments made by the applicants, have to be tested during the trial after verification of the documents which are highly relied upon by learned counsel for the applicants herein. Therefore, at this preliminary stage, no interference is called for in the summoning order against the applicants at this stage. Therefore, veracity of the documents which are being relied upon, cannot be tested under the proceedings u/S 482 Cr.P.C. Therefore, learned counsel for the State has prayed for dismissal of the instant application.

6. Having heard the submissions made by learned counsels for the parties this Court has carefully perused the record of the case and from the record of the case it is apparent that for an incident dated 08.02.2007, an F.I.R. was registered against the applicants herein on 27.02.2007. However, in the statements u/S 161 Cr.P.C, the query was made by the Investigation Officer, as to why the complaint was not made on 08.02.2007 itself on the date of incident. The categorical answer has been given by the informant on 08.02.2007, after injury he has gone to the hospital and got the x-ray examination. He had no knowledge about the medical examination and subsequently, after the medical examination on 15.02.2007, he has lodged the instant F.I.R. However, on the date of incident itself he has send an information through his son to the police station but whom he has given the information is not known and the reason for not coming to the police station on the date of incident itself has been well explained of the applicant in their statement u/S 161 Cr.P.C. Therefore, the medical record which is being relied upon with regard to the admission and medical examination and x-ray report of the informant on 24.01.2007, by the applicants cannot be verified at this stage, which can be done during the

trial.

7. In view thereof and in the light of the judgments of the Apex Court, ***R. P. Kapoor Vs. State of Punjab, AIR 1960 S.C. 866; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] and Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others : 2021 SCC OnLine SC 315***, the instant application is devoid of merit and is hereby ***dismissed***.

Order Date :- 28.11.2023

Shubham Arya