

Court No. - 89

Case :- APPLICATION U/S 482 No. - 29394 of 2023

Applicant :- Nafis And 2 Others

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Krishna Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma,J.

1. Heard learned counsel for the applicants and learned AGA for the State.
2. The present 482 Cr.P.C. application has been filed to quash the impugned summoning order dated 04.07.2023 passed by Additional Civil Judge (Junior Division)/ Judicial Magistrate, Court No.4, Rampur in Complaint Case No.5387 of 2022, under sections 323, 354, 504, 506 I.P.C., Police Station Swar, District Rampur.
3. Learned counsel for the applicants submits that instant proceeding is malice proceeding. Initially FIR was lodged against the applicants under sections 324, 354 I.P.C. Investigating Officer submitted final report against the applicants and on final report no order has been passed. Opposite party no.2 lodged complaint against the applicants for the same set of facts alleging in the complaint. In complaint proceeding, statement under sections 200 & 202 Cr.P.C. was recorded. Thereafter, learned Magistrate by order dated 04.07.2023 summoned the accused-applicants in the aforesaid sections. Learned counsel for the applicants submits that FIR was lodged by opposite party no.2 against the applicants and in investigation final report has been submitted and no protest application has been filed by opposite party no.2 in the proceeding but lodged complaint against the applicants. Complaint proceeding initiated by opposite party no.2 is malice proceeding and already FIR was lodged in which final report has been submitted. Applicants should have filed protest application against the final report. Lodging complaint is against the provision of Cr.P.C. Learned counsel for the applicants has placed reliance over judgment of the Apex Court in **Vijay Kumar Ghai & others vs. The State of West Bengal & others;2022 0 Supreme (SC) 235** and has relied upon paras 37, 38 & 39 of the said judgment. It has been held that two simultaneous proceeding arising out of same cause of action is abuse of the process of the court.

4. *Per contra*, learned A.G.A. vehemently opposed the contention of learned counsel for the applicants.

5. Considered the argument raised by learned counsel for the applicants and perused the record. Proceeding initiated by the opposite party no.2 by lodging FIR in which final report has been submitted but court has not taken cognizance and opposite party no.2 has not moved any protest application and in place of filing protest petition, applicants have filed the present complaint. From perusal of the summoning order, it appears that opposite party no.2 has no knowledge regarding final report submitted by the Investigating Officer and it also appears that no notice so far has been issued to opposite party no.2 in regard to final report submitted by the Investigating Officer. Learned Magistrate considered the contents of complaint as well as statement recorded under sections 200 & 202 Cr.P.C. and has taken cognizance against the applicants. Summoning order is just and proper. Learned magistrate after applying his judicial mind has summoned the applicants. Reliance placed by learned counsel for the applicants over Apex Court judgment is not applicable as the facts of the case is entirely different from the facts of the case in hand. The Court is of the view that if the applicants have not filed any protest application against final report, complaint is maintainable. The order issuing summoning order against the applicants is just and proper.

6. In view of the above, this Court does not find any ground to interfere. The present 482 application is **dismissed** with the aforesaid observation.

Order Date :- 17.10.2023
SKD