Court No. - 86

Case :- APPLICATION U/S 482 No. - 37331 of 2023

Applicant :- Ashish Mohan
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Atul Kumar Shahi
Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta,J.

1. Heard learned counsel for the applicant, learned A.G.A. and perused the record.

2. The present application under Section 482 Cr.P.C. has been filed for quashing the charge sheet no.177 of 2022 dated 15.09.2022 and cognizance order dated 30.05.2023 as well as entire proceedings of Case No. 2296 of 2023 (State Vs. Ashish Mohan), arising out of Case Crime No. 378 of 2021, under Sections 420, 406 and 409 IPC and Section 3/7 of Essential Commodities Act, 1955, P.S. Fatehganj East, District Bareilly, pending in the court of Addl. Chief Judicial Magistrate, District Bareilly.

3. Learned counsel for the applicant has submitted that from the perusal of the allegations made in the FIR and the material collected during the course of investigation, no offence is disclosed against the applicant and the present case has been instituted with a malafide intention for the purpose of harassment. He has pointed out certain documents and statements in support of his contention, as such, impugned charge sheet, cognizance order as well as entire proceedings be quashed.

4. Per contra, learned AGA has submitted that from the perusal of the allegations made in the FIR and the material collected during the course of investigation, prima facie offence is clearly made out against the applicant and as such, impugned charge sheet, cognizance order as well as entire proceedings cannot be quashed.

5. From the perusal of the material on record and looking into the facts of the case, at this stage, it cannot be said that no offence is made out against the applicant. All the

submissions made at the bar relate to the disputed questions of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C.

6. At this stage, only prima facie case is to be seen in the light of the law laid down by the Supreme Court in the cases of ***R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cr.) 192*** and lastly ***Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cr.) 283***. The disputed defence of the accused cannot be considered at this stage.

7. Moreover, the applicant had already been directed to be released on bail and he has got right of discharge under Section 239, 245 or 227 Cr.P.C., as the case may be, through a proper application for the said purpose and he is free to take all the submissions in the said discharge application before the trial court.

8. At this stage, this Court is not in a position to weigh the factual matrix of the case properly and accused has a right to file a discharge application before the trial court and the trial court may decide his discharge application, if there is no evidence against him.

9. The prayer for quashing the impugned charge sheet, cognizance order as well as entire proceedings is therefore refused.

10. However, it is directed that in case the applicant files an application for discharge before the court below, the same be considered and decided expeditiously considering each and every aspect of the matter in accordance with law after hearing the public prosecutor.

11. With the aforesaid directions, this application under Section 482 Cr.P.C. is finally disposed of.

Order Date :- 16.11.2023
Subham

Digitally signed by :-
SUBHAM KUSHWAHA
High Court of Judicature at Allahabad