

Court No. - 93

Case :- APPLICATION U/S 482 No. - 36896 of 2010

Applicant :- Girish Narayan Tiwari And Others

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

Counsel for Applicant :- B.B. Dubey

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard Sri B.B. Dubey, learned counsel for the applicants and learned AGA for the State.

2. Present application under Section 482 Cr.P.C. has been filed for quashing the entire proceeding of Case No. 393 of 2008 (Gaya Singh vs.Girish Narayan Tiwari and others) and summoning order dated 06.07.2009 under section 394 IPC pending in the Court of the learned Special Judge, D.A.A. Act, Etawah.

3. The contention of learned counsel for the applicants is that at the time of the incident the applicants were in police and applicants had stopped opposite party no.2 while he was transporting wood. Feeling annoyed by the aforesaid intervention on part of the applicants, opposite party no.2 filed a complaint dated 12.09.2008. Thereafter, he also examined himself under section 200 Cr.P.C. and one of his witness Vinod under section 202 Cr.P.C. and on the basis of the aforesaid complaint, the applicant was summoned under section 394 IPC.

4. Counsel for the applicant further submits that allegation against the applicants were that the applicants had taken Rs.9008/- from the pocket of opposite party no.2, subsequently, opposite party no.2 himself filed an application before the concerned court for withdrawing his complaint. This application was rejected vide the impugned order dated 04.09.2010 on the ground the present offence does not fall under the category of the cases which can be compounded.

5. I have heard counsel for the applicants and perused the record.

6. It appears that because of certain reasons, opposite party no.2 initially filed the complaint against the applicants who are policemen and subsequently, realizing his mistake, he also moved

an application for withdrawal of the aforesaid complaint which has been rejected by the impugned order. One fact is also relevant that while taking cognizance on the complaint, the court below has failed to consider the fact that both the applicants were government servants and prior sanction under section 197 Cr.P.C was also not taken before taking cognizance.

7. Hon'ble Apex Court in the case of **State of M.P. vs. Laxmi Narayan; (2019) 5 SCC 688**, observed as under:-

"15.1. the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

15.2. such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

15.3 similarly, such power is not to be exercised for the offences under the special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender."

8. From above noted judgements, it is clear that merely mentioning the section of serious offences will not refrain the court from quashing the proceeding, if on considering the material on record, offences under that section is not made out.

9. Considering the fact as well as on perusal of record, the proceeding of Case No. 393 of 2008 (Gaya Singh vs. Girish Narayan Tiwari and others) and summoning order dated 06.07.2009 under section 394 IPC pending in the Court of the learned Special Judge, D.A.A. Act, Etawah is hereby, **quashed**.

10. With the aforesaid direction, the present application is **allowed**.

Order Date :- 18.10.2023

Madhurima