

Court No. - 89

Case :- APPLICATION U/S 482 No. - 29207 of 2023

Applicant :- Huzaifa And Another

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Mohd. Samiuzzaman Khan, Abdul Momin

Counsel for Opposite Party :- G.A., Mohd. Monis

Hon'ble Deepak Verma, J.

1. Heard learned counsel for the applicants and learned A.G.A. for the State.

2. This application under Section 482 Cr.P.C. has been filed by the applicant to quash the impugned charge sheet no. 250 of 2021, dated 15.12.2021, Cognizance order dated 02.02.2022 and summoning order dated 01.02.2022 in Special Session Trial No. 94 of 2022 (State Vs. Huzaifa and another), arising out of Case Crime No. 185 of 2021, under Sections 354, 452 and 504 IPC and Section 7/8 POCSO Act, 2012 against the applicant No. 1 and under Section 504 against the applicant no. 2, Police Station- Ghazipur, District- Fatehpur pending in the Court of Exclusive Special Judge (POCSO Act), District Fatehpur.

3. Counsel for the applicants submits that instant case is a malicious prosecution as there is no evidence to prosecute the applicants in the present case. He next submits that brief facts of the case, applicant No. 1 entered into the house of the opposite party No. 2 and flirted with her sleeping minor daughter of opposite party no. 2 and heard the alarm ran away with applicant no. 2 who was standing out of the house and abuses the informant and other members. Learned counsel for the applicants submits that the cognizance taken by learned Magistrate vide order dated 01.02.2022 is in printed proforma and has not applied its judicial mind.

4. Per contra, learned AGA opposes the submissions made by counsel for the applicants and submits that submissions raised by counsel for the applicants are disputed question of facts, which cannot be examined at this stage. He next submits that charges have been framed and examination of PW-1 is going on and as such trial is going on, the application under Section 482 Cr.P.C.

challenging the cognizance order is not maintainable.

5. Considered the arguments raised by learned counsel for the applicants and perused the entire records. Submissions raised by learned by learned counsel for the applicants are disputed question of facts and sitting under 482 Cr.P.C. jurisdiction, this Court has no power to examine the facts and it is apparent that PW-1 examination is going on. Applicants have challenged the cognizance order dated 01.02.2022 where the charge has been framed and trial is commenced and one prosecution witness is being examined by trial court at this stage cognizance order cannot be set aside.

6. In view of the above, in the light of judgment of the Apex Court in the matters 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**, no ground for quashing the proceedings of the aforesaid case, is made out which may call for any interference by this Court in exercise of its inherent power under Section 482 Cr.P.C. as the same do not suffer from any illegality or infirmity.

7. The present application under Section 482 Cr.P.C. lacks merit and is, accordingly, **dismissed**.

Order Date :- 16.10.2023

A. Prajapati