

Court No. - 92

Case :- APPLICATION U/S 482 No. - 35493 of 2023

Applicant :- Faraz @ Mohd Farhad

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

Counsel for Applicant :- Sushil Kumar Pandey

Counsel for Opposite Party :- G.A., Mohd. Akbar Shah Alam Khan

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Sushil Kumar Pandey, learned counsel for the applicant, Sri Akbar Shah Alam Khan, learned counsel for the opposite party no.2 and Sri K.K. Tripathi, learned A.G.A. for the State.

2. The instant application has been filed seeking quashing of the summoning order dated 30-03-2019 as well as entire proceedings of Special Sessions Trial Complaint Case No. 13/9 of 2018, Km. Amal Parvin through mother/natural guardian Nasima Vs. Sabab Alam & Others, under Sections 452, 376D IPC and Section 5/6 of POCSO Act, P.S. Titavi, district Muzaffar Nagar, pending in the court of learned Additional Sessions Judge/Special Judge (POCSO Act), Court No.8, Muzaffar Nagar.

3. Learned counsel for the applicant submits that the opposite party no.2 is the wife of one Arshad who used to take money from the persons under the pretext of sending them to Saudi Arabia for their employment and huge amount has been collected by the said Arshad from the applicant herein under the garb of sending him to Saudi Arabia for which the applicant herein has lodged an F.I.R. dated 14-03-2018 against the husband of the opposite party no.1 being Case Crime No. 0306 of 2018, under Sections 420, 406, 468, 504 and 506 IPC. In retaliation thereof the opposite party no.2 had filed a complaint case No.1503/9/2018 (Smt.Nasima Vs. Sabab Alam and Others) alleging the incident of 10-04-2018. According to which the applicant along with others has taken away the opposite party no.2 and her daughter and they were sexually assaulted by the applicant. Learned counsel for the applicant further submits that the allegation in the said complaint case were prima facie found not sustainable and therefore, vide order dated 27-11-2018 the said complaint case was rejected by the learned Magistrate. Learned counsel for the applicant further submits that subsequently the opposite party no.2 has filed yet another Complaint Case No.13/9 of 2018 (Narain and another Vs. Sabab

Alam and Others) making almost the similar allegations including the allegation of 10-04-2018 and the subsequent allegation of an incident dated 26-11-2018 whereby the applicant and others co-accused persons were accused of sexual assault to the opposite party no.2 and her daughter. Learned counsel for the applicant further submits that in the instant case vide order dated 30-03-2019 the learned Magistrate has taken cognizance against the applicant as well as against the other accused persons. Learned counsel for the applicant further submits that since the allegations were of similar nature for which a complaint has already been dismissed by the learned Magistrate, the similar allegations have been made by the opposite party no.2 in retaliation of the F.I.R. lodged by the applicant against the husband of the opposite party no.2, therefore, the instant case is nothing but the malicious prosecution on behalf of the opposite party no.2, hence, he has prayed for quashing of the entire proceedings arising out of the said complaint case.

4. Per contra, learned counsel for the opposite party no.2 submits that the opposite party no.2 is living separately from her husband, therefore, the opposite party no.2 has nothing to retaliate against the applicant as no complaint is filed by the applicant against the opposite party no.2. Learned counsel for the applicant further submits that in the instant complaint in addition to the incident dated 10-04-2018 for which the earlier complaint was rejected, the applicant and the other co-accused persons have again sexually assaulted the opposite party no.2 and her daughter on 26-11-2018 for which the instant complaint has been lodged by the opposite party no.2 on which the learned Magistrate after considering the statements under Section 200 and 202 Cr.P.C. has taken cognizance on 30-03-2019 and the trial is proceeding against the applicant and the instant application has been filed by the applicant after a gap of four years without any explanation for the same. The trial is already in progress and the statement of PW-1 has already been recorded and the same is pending for the cross-examination by the accused persons. Learned counsel for the opposite party no.2 further submits that the co-accused Aarif who has filed an application U/S 482 No. 958 of 2020, which has been rejected by this Court vide order dated 04-02-2020 and the case of the applicant herein is similar and the allegations against the applicant and Aarif are the same as were made against Aarif, whose application U/S 482 has already been rejected. Therefore, he has prayed for dismissal of the instant application. Learned counsel for the opposite party no.2 further submits that the applicant herein is a person of means and power and is a muscleman and he is continuously threatening and assaulting the opposite party no.2

and her daughter from giving any evidence against the applicant for which the opposite party no.2 has filed the complaint case no. 619/9 of 2022 (Nasima Vs. Sabab Alam and others) on which the cognizance has already been taken by the learned Magistrate on 03-06-2023. Similarly the daughter of the opposite party no.2 has also lodged a similar case being Case No. 31 of 2023 (Amal Praveen Vs. Sabab Alam and others) wherein the cognizance has been taken by the learned Judicial Magistrate on 14-07-2023, therefore, learned counsel for the opposite party no.2 submits that no interference is called for and the applicant is not required to given any leniency and since the prima facie allegations are made out against the applicant and the trial is already progressing the same cannot be quashed at this stage.

5. Learned counsel for the State submits that allegations in the instant case are duly supported by the statement of opposite party no.2 and the other witnesses under Section 200 and 202 Cr.P.C, which make out a prima facie case against the applicant herein, therefore, specifically when the application U/S 482 Cr.P.C. filed by the other co-accused person who is similarly situated has already been dismissed, therefore, no interference is called for in the instant case by this Court.

6. Having heard the rival submissions made by the learned counsel for the parties, this Court has gone through the record of the case. From the perusal of the complaint as well as the statements under Sections 200 and 202 Cr.P.C. a prima facie case is made out against the applicant herein, therefore, the learned Magistrate has taken cognizance against the applicant on the prima facie material against the applicant. The other submissions with regard to the pendency of the complaint filed by the applicant against the husband of the opposite party no.2 has no relevance in view of the submissions made by the learned counsel for the opposite party no.2 that she is residing separately from the husband and the accused persons looking at the petty situation of the opposite party no.2 are sexually assaulting the opposite party no.2 and her daughter repeatedly. The trial is already in progress. The contentions raised by the applicant's counsel raises disputed questions of fact, therefore, the sufficiency of material and allegations is not to be seen at this stage, only the prima facie case has to be seen whether the offence has been made out against the applicant herein and from the allegations made in the complaint as well as in the statements under Section 200 and 202 Cr.P.C., prima facie case is made out against the applicant herein and the application of the co-accused has already been dismissed by this

Court.

7. In view thereof, there being a prima facie case against the applicant, the instant application is devoid of merits and is hereby **dismissed** in view of the law laid down by the Apex Court in **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.**

Order Date :- 31.10.2023

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