

Court No. - 89

Case :- APPLICATION U/S 482 No. - 30505 of 2023

Applicant :- Devendra Kumar Chaudhary

Opposite Party :- State Of U.P. And 4 Others

Counsel for Applicant :- Jigyasa Singh, Navin Kumar

Counsel for Opposite Party :- G.A., R.P.S. Chauhan

Hon'ble Deepak Verma, J.

1. Heard Ms. Jigyasa Singh, learned counsel for the applicant and learned A.G.A. for the State.
2. The present 482 Cr.P.C. application has been filed to quash the entire proceedings of Complaint No. 13214 of 2022 (State of U.P. vs. Ikram and Others), arising out of Case Crime No. 10 of 2022, under Section 3/4 of the Railway Property (Unlawful Possession) Act, 1966, RPF/Post GKJGY/SRE, District- Saharanpur and Cognizance & Summoning order dated 13.06.2022 passed by the CJM, Judicial Magistrate, Saharanpur.
3. Learned counsel for the applicant vehemently submitted that the order passed by the learned Magistrate taking cognizance and thereafter, summoning the accused-applicant does not reflect any application of judicial mind to the facts of the present case. He next submits that cognizance has been taken by the Magistrate in a very mechanical manner.
4. He next submitted that before the Magistrate takes cognizance, it is imperative that he must take notice of the accusations and apply his mind to the allegations made in the complaint or in the police report or information received from the source other than a police report as the case may be and the material filed therewith and it is only after he is satisfied that the allegations, if proved would constitute an offence, he should take cognizance. In this case the Magistrate has taken cognizance without taking into consideration the aforementioned parameters.
5. In support of his submissions learned counsel for the applicant has placed reliance over the judgment of Hon'ble Apex Court in the case of **Sunil Bharti Mittal vs. Central Bureau of Investigation reported in LAWS(SC)-2015-1-17**; wherein in paragraph no. 40, Hon'ble Apex Court has held as under:-

"40. It is stated at the cost of repetition that in the present case, while issuing summons against the appellants, the Special Magistrate has taken shelter under a so-called legal principle, which has turned out to be incorrect in law. He has not recorded his satisfaction by mentioning the role played by the appellants which would bring them within criminal net. In this behalf, it would be apt to note that the following observations of this Court in the case of GHCL Employees Stock Option Trust vs. India Infoline Ltd., 2013 4 SCC 505:

"19. In the order issuing summons, the learned Magistrate has not recorded his satisfaction about the prima facie case as against Respondents 2 to 7 and the role played by them in the capacity of Managing Director, Company Secretary or Directors which is sine qua non for initiating criminal action against them. (Thermax Ltd. v. K.M. Johny followed) xx xx xx"

6. Counsel for the applicant has also placed reliance over the judgment of Hon'ble Apex Court in the case of **Pepsi Foods Ltd. vs. Special Judicial Magistrate reported in 1998 (5) SCC**, wherein in paragraph no. 28, Hon'ble Apex Court has held as under:-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

7. Per contra learned A.G.A. made his submissions in support of the impugned order.

8. I have carefully examined the submissions advanced by the learned counsel for the parties and perused the impugned order as well as the other materials brought on record, I find that the facts of the case lie in an every very narrow compass. After completing investigation, RPF filed compliant before Chief Judicial Magistrate as Complaint Case No. 13214 of 2022, under Section 3/4 of the Railway Property (Unlawful Possession) Act, on the basis of which the Chief Judicial Magistrate, Saharanpur took cognizance of offences under Section 3/4 of the Railway Property (Unlawful Possession) Act, 1966 on 13.06.2022.

9. From the perusal of the impugned order, it appears that before taking cognizance the learned Magistrate has neither taken into consideration the nature of accusations nor he has made any any effort to satisfy himself as from the materials collected during investigation and keeping in view the nature of the allegations made against the applicant any offence under Section 3/4 of the Railway Property (Unlawful Possession) Act, 1966 was disclosed or not. By the impugned order he has taken cognizance in a very cursory and routine manner.

10. Thus, in view of the above and the fact that the impugned order by which cognizance has been taken does not reflect any application of mind the same cannot be sustained. This application is **allowed**. The order dated 13.06.2022 passed by Chief Judicial Magistrate, Saharanpur in Complaint No. 13214 of 2022 (State of U.P. vs. Ikram and Others), arising out of Case Crime No. 10 of 2022 is set aside with the direction that the Magistrate shall pass a fresh order in

the matter in accordance with law within a period of one month from the date of production of a certified copy of this order.

11. Learned counsel for the applicant undertakes to file a certified copy of this order before the Magistrate concerned within a month from today. In case he fails to do so, this application shall stand dismissed automatically.

Order Date :- 31.10.2023

Aditya