

Court No. - 89

Case :- APPLICATION U/S 482 No. - 30738 of 2023

Applicant :- Smt. Brajlata And 3 Others

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

Counsel for Applicant :- Mayank

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma,J.

1. Shri Gaya Prasad Mishra, Advocate filed a Vakalatnama on behalf of opposite party no.2 today, Which is taken on record.

2. Heard Shri Mayank learned counsel for the applicants, Shri Gaya Prasad Mishra, learned counsel for opposite party no.2 and learned AGA for the State.

3. The present application U/S 482 Cr.P.C. has been filed to quash the impugned order dated 13.07.2023, passed by the learned Additional Session Judge/ Special Judge, POCSO Act, Mathura in Final Report No.577 of 2023, Chandrapal Singh Vs. Triloki and others, under sections 452, 376-D, 323, 506 IPC and under section 5/6 Prevention of Children from Sexual Offences Act, Police Station Raya District Mathura, arising out of Case Crime No.55 of 2023, registered under aforesaid sections at Police Station Raya, District Mathura, whereby learned Court below rejected the final report dated 4.4.2023 and took cognizance of offence against accused applicants and summoned the accused applicant nos. 3 and 4, under sections 452, 376-D, 323, 506 IPC and under Section 5/6 of POCSO Act, and accused applicant nos.1 and 2 under section 323 and 506 IPC in relation to the aforesaid Case Crime number and sections registered at Police Station Raya, District Mathura.

4. Learned counsel for the applicants submits that cognizance and summons issued against the applicants by learned Additional Session Judge/ Special POCSO ACT vide order dated 13.7.2023 is abuse of process of law.

5. Learned counsel for the applicants submits that opposite party no.2 lodged the first information report, in which, Investigating Officer found no evidence to prosecute them submitted final report, but learned Magistrate without considering the evidence collected during the investigation set aside the final report and accepted the protest petition of the opposite party no.2 and taken cognizance, which is illegal and is not supported by evidence.

6. From perusal of the statement of the victim and father of the victim and contents of FIR no offence under aforesaid section is made out against the applicants. In counter blast, only to harass the applicants instant FIR was lodged and during investigation, Investigating Officer has not collected any credible materials to file charge-sheet. He next submitted that once final report is rejected then court cannot consider the evidence collected by the Investigating Officer.

7. *Per contra*, learned counsel for opposite party no.2 has vehemently opposed the submission raised by the learned counsel for the applicants and submits that all submission raised by the learned counsel for applicant is disputed question of facts and learned Magistrate after perusing the evidence collected during investigation, *prima facie*, found evidences against the applicants and summoned the applicants in aforesaid offence.

8. *Prima facie*, submissions of counsel for the applicants having no force as learned Magistrate has given power under code, if Investigating Officer does not find any evidence to submit charge-sheet, the Magistrate shall apply his judicial mind on evidence collected by Investigating Officer and Courts find that *prima facie* offences are made out against the applicants and court can summon the accused. Power to apply his judicial mind on evidence collected by Investigating Officer is absolute and unfettered. Concerned court cannot be treated as mere post office to accept the closure report filed by Investigating Officer in toto. Learned Magistrate/ concerned court has rightly apply his judicial mind summon the accused/ applicants.

9. In view of the above, prima facie, case is made out against the applicants. No interference is warranted, at this stage. Learned trial court has power to apply his judicial mind on the evidence collected during investigating.

10. The present 482 application is **dismissed** with the aforesaid observation.

11. Considering the aforesaid alternative prayer of the applicants, it is directed that applicants no.1 and 2 shall surrender before the concerned Court below within four weeks from today and in case apply for bail, the bail application shall be decided expeditiously by the courts below in accordance with law laid down by the Apex Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation** and another, reported in 2021 SCC OnLine SC 922.

Order Date :- 28.10.2023/SFH