

Court No. - 91

Case :- APPLICATION U/S 482 No. - 30937 of 2023

Applicant :- Mukhtar Ahmad

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

Counsel for Applicant :- Ashish Mishra, Dhir Man Misra

Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar, J.

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

2. This application under Section 482 Cr.P.C. has been filed by the applicant to quash the charge sheet dated 26.02.2019 and cognizance order dated 05.02.2021 as well as entire proceedings of Case No. 1181 of 2021 (State vs. Aalim and Others), arising out of Case Crime No. 0048 of 2019, under Sections 468, 429 I.P.C. read with 11(th) The Prevention of Cruelty to Animals Act, 1960, Police Station Sarai Inayat, District Allahabad, pending in the court of A.C.J.M., Court No.10, Allahabad and further prayer to stay the further proceedings of the aforesaid case has been made.

3. It is submitted by learned counsel for the applicant that initially FIR was lodged under sections 268, 429, 11 The Prevention of Cruelty to Animals Act, 1960 and after completion of the investigation the I.O. submitted charge sheet under sections 468, 429 I.P.C. read with 11(th) The Prevention of Cruelty to Animals Act, 1960 but the learned Magistrate without application of mind has in a mechanical way taken cognizance under sections 468, 429 I.P.C. read with 11(th) The Prevention of Cruelty to Animals Act, 1960. Learned counsel for applicant further submits that as per material on record, no offence under the charging sections is made out against applicant. As such impugned charge-sheet as well as entire proceedings of aforesaid case are liable to be quashed by this Court.

4. Per contra, learned AGA has submitted that from the perusal of the allegations made in the FIR and the material collected during the course of investigation, prima facie offence is clearly made out against the applicant and as such, entire proceedings cannot be quashed.

5. From the perusal of material on record and looking into the facts of the case at this stage it cannot be said that no offence is made out against the applicants. All the submissions made at the bar relates to the disputed question of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C. At this stage only prima facie case is to be seen in the light of the law laid down by Supreme Court in cases 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.** The disputed defence of the accused cannot be considered at this stage. Moreover, the applicants have got a right of discharge under Section 239 or 227/228 Cr.P.C. as the case may be, before the court below and they are free to take all the submissions in the said discharge application before the trial court.

6. The prayer for quashing the proceedings of case as well as charge sheet is refused.

7. At this stage, learned counsel for the applicant submit that applicant may be permitted to move discharge application before the court concerned.

8. Keeping in view the facts and circumstances of the case, it is directed that the applicant will move a proper application for discharge through counsel within one month from today and they are free to take all the submissions in the said discharge application before the Trial Court which shall be considered and disposed of by the Trial Court in accordance with law within a period of two months.

9. Accordingly, the present application is **disposed of**.

10. For a period of one month, no coercive action shall be taken against the applicant.

Order Date :- 13.10.2023

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