

Court No. - 91

Case :- APPLICATION U/S 482 No. - 31768 of 2023

Applicant :- Arpit Jain

Opposite Party :- State of U.P.

Counsel for Applicant :- Nagesh Kumar Dwivedi, Anjani Kumar Rai

Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar, J.

1. Heard learned counsel for the applicant and learned AGA for the State.
2. The present application u/s 482 Cr.P.C. has been filed by the applicant with the prayer to quash the entire proceeding of Criminal Case No.1850 of 2023, arising out of Case Crime No.941 of 2021, under Section 447 IPC, Police Station Kotwali Lalitpur, District Lalitpur.
3. Learned counsel for the applicant submits that initially an F.I.R. was lodged against eight named persons and some unknown person bearing Case Crime No.941 of 2021, under Sections 441, 447, 467, 468, 471 IPC. Further submission is that the Investigating Officer after completing the investigation, submitted charge sheet only against the applicant and rest of the accused were exonerated and cognizance was taken accordingly, thereafter the first informant moved an application before the court concerned under Section 19(1)(b) Cr.P.C. with the prayer to summon the rest of the accused persons, who have been exonerated by the Investigating Officer during the course of the investigation thereupon the order dated 15.03.2023 was passed and the application was rejected accordingly against which a Criminal

Revision No.68 of 2023 was filed by the opposite party no.2, which was decided vide order dated 16.06.2023 and the impugned order was set aside. The main contention of learned counsel for the applicant is that in the criminal revision proposed accused have not been made party and without making the party and giving opportunity of hearing, the criminal revision cannot be legally disposed off. Further submission is that the manner in which the criminal proceeding is carried out is nothing but an abuse of process of Court. In support of his submission, learned counsel for the applicant has placed reliance upon the judgement of Hon'ble Apex Court in the case of **Raghu Raj Singh Rousha Vs. Shivam Sundaram Promoters, 2008 LawSuit(SC) 1159.**

4. In paragraph no.2 of Section 401 Cr.P.C. is quoted as under:-

"(2) No order under this Section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence."

5. On the other hand, learned AGA has opposed the prayer but could not dispute the aforesaid facts and submitted that it is a legal and settled proposition that proposed accused should have been given opportunity and made party and the same has not been done in the case.

6. Keeping in view the entire facts and circumstances of the case and the manner in which proceeding carried out by the trial court, it is apparent that no opportunity has been given to the proposed accused and the order has been passed against the principles of law, which is not sustainable in the eye of law and the impugned order is set aside with the direction to the court concerned that after giving opportunity to both sides, matter shall be heard and

decided afresh.

7. In view of the such facts, the impugned order dated 16.06.2023 is here by set aside.

8. Accordingly, the instant application stands **disposed off**.

9. The matter is remanded back to the court concerned to pass fresh order in accordance with law within a period of two month from the date of production of a certified copy of this order.

Order Date :- 28.10.2023
Sanjeet