

Court No. - 88

Case :- APPLICATION U/S 482 No. - 32410 of 2023

Applicant :- Manoj And 5 Others

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

Counsel for Applicant :- Vishnu Kumar Patil

Counsel for Opposite Party :- G.A., Pankaj Sharma, Pramod Kumar Dwivedi, Prashant Sharma

Hon'ble Sanjay Kumar Singh, J.

1-Heard learned counsel for the applicants and learned Additional Government Advocate for the State/opposite party no.1. None is present on behalf of the opposite party no.2, whereas name of three counsel is shown in the cause list.

2-This application under Section 482 Cr.P.C. has been filed by the applicants with a prayer to quash the charge-sheet dated 18.10.2022, cognizance order 31.03.2023 and proceedings of Case No. 10255 of 2023 (*State vs. Manoj and others*) arising out of case crime no. 668 of 2022, under Sections 147, 323, 504, 506, 452 I.P.C., Police Station Tundla, District Firozabad pending in the court of Chief Judicial Magistrate, Firozabad.

3-Brief facts of the case which are required to be stated are that the opposite party no.2 lodged a first information report on 07.10.2022 against the applicants for the alleged offence under Sections 147, 323, 504, 506, 452 I.P.C. with regard to an incident dated 30.09.2022 making allegation inter-alia of assault against them.

4-The main substratum of argument of learned counsel for the applicants is that out of six applicants, applicant no. 4 namely Vishmbhar and opposite party no. 2 namely Surajpal are real brothers. The father of the applicant no. 4, in his life time, executed a will deed dated 25.05.2021, where by he had given equal share in ancestral house to the applicant no.4 as well as opposite party no. 2 by the applicant no. 4. The opposite party no.2 has sold

his share to the applicant no.4 after taking sale consideration amount Rs. 3,00,000/- and given possession of his share to the applicant no.4 but later on, he, with dishonest intention, denied the same and subsequently opposite party no.2 on account of said dispute, lodged first information report against the applicants after seven days on false and concocted allegations. It is next submitted that no visible injury on the body of the opposite party no.2 was found. Lastly, it is submitted that the applicants have been falsely implicated in this case. No offence is made out against the applicants.

5-Per contra, learned Additional Government Advocate for the State refuting the submissions advanced on behalf of the applicants submitted that upon perusal of F.I.R. and on the basis of the allegations made therein as well as material against the applicants, as per prosecution case, the cognizable offence against the applicants is made out. The criminal proceedings against the applicants cannot be said to be abuse of the process of the Court. Hence this application is liable to be dismissed.

6-Having heard the learned counsel for the parties as noted above and examined the matter in its totality, I find that applicants have come up with a plea that opposite party no. 2 had sold his share to the applicant no.4 but neither date of sale-deed has been mentioned nor copy of sale-deed in question has been brought on record. Even nothing is on record to indicate the transfer of Rs. 3,00,000/- by the applicant no.4 in the account of opposite party no.2. The grounds taken in the application reveal that many of them relate to disputed question of fact. This Court is of the view that the appreciation of evidence is a function of the trial court. This Court in exercise of power under Section 482 Cr.P.C. cannot assume such jurisdiction and put an end to the process of trial provided under the law. It is well settled by the Apex Court in catena of judgments that the power under Section 482 Cr.P.C. at pre-trial stage should not be used in a routine manner but it has to be used sparingly, only in such an appropriate

cases, where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceedings or where allegations made in First Information Report or charge-sheet and the materials relied in support of same, on taking their face value and accepting in their entirety do not disclose the commission of any offence against the accused. The disputed questions of facts and defence of the accused cannot be taken into consideration at this pre-trial stage, which can be more appropriately gone into by the trial court at the appropriate stage.

7-This Court does not find that this case falls in a categories as recognized by the Apex Court for quashing the criminal proceeding of the trial Court at pre-trial stage. Only prima-facie satisfaction of the Court about the existence of sufficient ground to proceed in the matter is required. The impugned criminal proceedings under the facts of this case cannot be said to be abuse of the process of the Court. There is no good ground to invoke inherent power under Section 482 Cr.P.C. by this Court.

8-The relief as sought by the applicants through the instant application is hereby refused.

9-This application under Section 482 Cr.P.C. lacks merit and is, accordingly, ***dismissed***.

Order Date :- 22.11.2023

Saurabh