

Court No. - 88

Case :- APPLICATION U/S 482 No. - 32509 of 2023

Applicant :- Ravi Varshney And Another

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

Counsel for Applicant :- Abhishek Mishra

Counsel for Opposite Party :- G.A.,Ravi Pandey

Hon'ble Sanjay Kumar Singh,J.

Heard learned counsel for the applicants, learned Additional Government Advocate for the State of U.P./opposite party no.1, learned counsel for the opposite party no.2 and perused the record.

This application under Section 482 Cr.P.C. has been filed by the applicants with a prayer to quash the order dated 28.02.2023 whereby the court below allowed the criminal revision filed by the opposite party no. 2, summoning order dated 04.07.2023 and proceedings of complaint no. 29753 of 2021 (*Chandan Kumar Gupta vs. Ravi Varshney and others*), under Sections 323, 504, 506, 392 I.P.C., Police Station Delhi Gate, District Aligarh pending in the court of Additional Chief Judicial Magistrate, Court No. 1, Aligarh.

Brief facts of the case which are required to be stated are that the opposite party no. 2-Chadan Kumar Gupta filed a complaint dated 22.12.2021 against the applicants namely Ravi Varshney and Amit Varshney for the alleged offence under Section 323, 504, 506 and 392 I.P.C. in which the learned Magistrate, after recording the statement under Section 200 Cr.P.C. of the complainant and under Section 202 Cr.P.C. of Ajay Sharma and Rohit Gupta, summoned the applicants vide order dated 26.08.2022 for the offence under Sections 323, 504 and 506 I.P.C. only. The said order was challenged by the opposite party no. 2 in Criminal Revision No. 305 of 2022 merely on the ground that the applicants should have also been summoned for the offence under Section 392 I.P.C., which was allowed vide order dated 02.11.2022 of District and Sessions

Judge, Aligarh setting aside the order dated 26.08.2022 directing the learned Magistrate to pass fresh order. Thereafter, the learned Magistrate has again passed fresh summoning order dated 03.12.2022 against the applicants for the offence punishable under Sections 323, 504 and 506 I.P.C. The opposite party no. 2 again preferred a criminal revision no. 455 of 2022 against the said order dated 03.12.2022, which was again allowed setting aside the summoning order dated 03.12.2022 with a direction to learned Magistrate to pass fresh order in the light of statement under Section 200 and 202 Cr.P.C. In the said background of the facts, learned Magistrate has passed a fresh order dated 04.07.2023 summoning the applicants for the offence punishable under Sections 323, 504, 506 and 392 I.P.C.

It is submitted by learned counsel for the applicants that the applicants are businessman and they are distributor of Parle-G biscuit. The opposite party no. 2 used to bring biscuits from somewhere else without proper bills which was not allowed in the trade. When the applicants opposed the said act and conduct of the opposite party no. 2, he became annoyed and in order to settle his personal score, filed a false complaint against the applicants. It is also mentioned that in the complaint dated 22.12.2021, two alleged incidents which have taken place on 03.12.2021 and 09.12.2021 have been mentioned whereas with regard to incident dated 03.12.2021, opposite party no. 2 has already lodged a first information report on 04.12.2021 registered at case crime no. 0716 of 2021, under Sections 323, 504 and 506 I.P.C., Police Station Delhi Gate, District Aligarh against the applicants and others. So far as alleged incident dated 09.12.2021 is concerned, same has falsely been mentioned as no such incident took place. Lastly, it is submitted that the applicants have been falsely implicated in this case. No offence is made out against the applicants.

Per contra, learned Additional Government Advocate for the State as well as learned counsel appearing on behalf of opposite party no. 2 refuting the

submissions advanced on behalf of the applicants submitted that considering the allegations made in the complaint as well as statement of the complainant and witnesses under Sections 200 and 202 Cr.P.C. respectively, 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.

Having heard the submissions of the learned counsel for the parties and perusing the entire record, I find that regarding the incident dated 03.12.2021, first information report dated 04.12.2021 has been lodged, in which the opposite party no. 2 and his brother received injuries and it is the case of the opposite party no. 2 that the said incident has been covered by CCTV camera installed at the place of incident. So far as the incident dated 09.12.2021 is concerned, the prosecution case is that on 09.12.2021, applicants stopped the complainant and threatened to kill him on account of previous F.I.R. dated 04.12.2021 lodged by him. The allegation has also been levelled that the applicants assaulted the complainant and snatched his gold chain from his neck and the witnesses Rohit Gupta and Ajay Sharma saved him. The grounds taken in the application reveal that many of them relate to disputed question of fact. At the stage of summoning the accused, the court below is not required to go into the merit and demerit of the case. Genuineness or otherwise of the allegations cannot be even determined at the stage of summoning the accused.

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 to an end to the process of trial provided under the law. It is also 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 complaint 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. Power under Section 482 of the Code of Criminal Procedure cannot be exercised where the allegations are required to be proved in court of law. 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. The applicants have an alternative statutory remedy of moving discharge application at the appropriate stage.

This Court does not find that this case fall in a categories as recognized by the Apex Court for quashing the criminal proceeding of the trial court at pre-trial stage. Considering the facts, circumstances and nature of allegations against the applicants in this case, the cognizable offence is made out. At this stage it would not be appropriate to adjudge whether the case shall ultimately end in conviction or not. Only prima facie satisfaction of the Court about the existence of sufficient ground to proceed in the matter is required. The impugned criminal proceeding 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.

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

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

Order Date :- 9.11.2023

Saurabh