

Court No. - 89

Case :- APPLICATION U/S 482 No. - 33488 of 2023

Applicant :- Ved Prakash Pandey And Another

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

Counsel for Applicant :- Ganesh Shankar Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma,J.

1. Heard Sri V.S.Dubey, Advocate, holding brief of Sri Ganesh Shankar Dubey, learned counsel for the applicants and the learned A.G.A. for the State.

2. This application under Section 482 Cr.P.C. has been filed by the applicants with a prayer for quashing the charge-sheet dated 01.09.2022, cognizance order dated 11.07.2023 passed by Village Court Tehsil Madihan, Mirzapur in NCR No.108 of 2022 (State vs. Ved Prakash Pandey and others), under Sections 323, 504 I.P.C., Police Station Madihan, District Mirzapur, pending in the Court of Village Court Tehsil Madihan, Mirzapur.

3. Learned counsel for the applicants submits that the opposite party no.2 lodged an FIR as NCR No.108 of 2022, under Section 323 I.P.C. After investigation, the police submitted a charge-sheet against the applicants under Section 323, 504 I.P.C. in the court of Village Court, Tehsil Madihan, Mirzapur which was registered as State case.

4. Learned counsel for the applicants next submits that the offences under Sections 323 and 504 I.P.C. are non-cognizable, hence in view of Explanation to Section 2 (d) Cr.P.C., the case could not proceed as State Case and it had to proceed as a complaint case. He further submits that the concerned Magistrate has erroneously passed an order taking cognizance on the charge-sheet.

5. It is clear from the above that all the offences punishable under Sections-323 and 504 are non-cognizable.

Explanation to Section 2 (d) Cr.P.C. runs as follows :-

"Explanation.- A report made by a police officer in a case which discloses, after investigation, the commission of a non- cognizable offence shall be deemed to be a complaint; and the police officer

by whom such report is made shall be deemed to be the complainant."

6. In view of the said explanation, report of the Police Officer, after investigation, disclosing commission of non-cognizable offence is to be deemed to be a complaint and the Police Officer, who submitted the report has to be deemed to be a complainant. In other words, the charge sheet submitted by the Police in a non-cognizable offence shall be treated to be a complaint and the procedure prescribed for hearing of the complaint case shall be applicable to that case.

7. In the present case from the material on record, it transpires that the charge sheet submitted by the Investigating Officer instead of being treated as a complaint case, has been taken cognizance of by the concerned Magistrate as a State Case, which is not permissible under law.

8. Learned A.G.A. vehemently opposed the submissions made by the learned counsel for the applicants.

9. After having considered the submissions made by the learned counsel for the parties and perused the material on record, as well as examined the relevant provisions of the Code of Criminal Procedure, I am of the view that the submissions made by the learned counsel for the applicants have force and are liable to be accepted.

10. For the aforesaid reasons, the present case be treated as a complaint case and the procedure prescribed for hearing of the complaint shall be followed by the court concerned before summoning the applicants.

11. With the aforesaid observations, this application stands **disposed of.**

Order Date :- 18.10.2023
SKD