

Court No. - 88

Case :- APPLICATION U/S 482 No. - 31862 of 2023

Applicant :- Saurabh Singh Alias Saurabh Yadav

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

Counsel for Applicant :- Shiv Sagar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

1- On the matter being taken up, Mr. Shiv Sagar Singh, learned counsel for the applicant filed second supplementary affidavit dated 06.11.2023 in Court today, which is taken on record.

2- Heard learned counsel for the applicant, learned Additional Government Advocate for the State/opposite party no.1 and perused the record.

3- This application under Section 482 Cr.P.C. has been filed by the applicant to quash the charge-sheet dated 23.07.2021 and proceedings of Criminal Case No. 13308 of 2023 (State Vs. Saurabh Singh and others) arising out of Case Crime No. 231 of 2019, under Section 406 IPC, Police Station Rasoolabad, District Kanpur Dehat pending in the court of Chief Judicial Magistrate, Kanpur Dehat.

4- Brief facts of the case which are required to be stated are that opposite party no. 2, namely, Pradeep Kumar Dixit, Assistant Development Officer lodged a first information report on 03.06.2019 for the offence under Sections 409, 406 IPC against the applicant, who is ex-Pradhan of village Ajanpur Indauti, Rasoolabad, district Kanpur Dehat, and co-accused Vishnu Gupta, who is ex-Secretary of village Ajanpur Indauti, Rasoolabad, district Kanpur Dehat, regarding embezzlement of a sum of Rs.24,93,174/-, out of which, a sum of Rs.17,61,924/- was related to 'Nirmal Bharat Abhiyan' and a sum of Rs.7,31,250/- was related to 'MGNREGA Scheme'. After culmination of investigation, charge-sheet dated 23.07.2021 has been filed against the

applicant and co-accused Vishnu Gupta, on which Magistrate concerned took cognizance and summoned the applicant and co-accused Jakir Ali under Section 406 IPC and Vishnu Gupta under Section 409 IPC vide order dated 03.07.2023.

5- Main substratum of argument of learned counsel for the applicant is that with regard to allegation of embezzlement of government fund as mentioned in the first information report, inquiry was done, in which allegations were found correct and inquiry report dated 13.12.2018 was submitted directing only co-accused Vishnu Kumar Gupta, then Secretary/Gram Panchayat Adhikari to deposit Rs.8,60,962/- half of the embezzled amount of 'Nirmal Bharat Abhiyan' and Rs.7,31,250/- of 'MGNREGA Scheme' vide order dated 07.01.2019. The said order was challenged by the applicant before the Commissioner in Case No. 01027 of 2019 but the same was dismissed on the ground that there is no direction for the applicant to deposit the embezzled amount, as such, charge-sheet dated 23.07.2021 of this case is liable to be quashed. Lastly, it is submitted that the applicant has been falsely implicated in this case. No offence is made out against the applicant. Under the facts and circumstances of the case, impugned charge-sheet and criminal proceeding against the applicant are liable to be quashed by this Court.

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

7- Having examined the matter in its totality, I find that it is not in dispute that in the order dated 07.01.2019, it has been observed that total a sum of Rs.24,93,174/- was misappropriated, out of which, a sum of Rs.17,61,924/- was related to

'Nirmal Bharat Abhiyan' and a sum of Rs.7,31,250/- was related to 'MGNREGA Scheme', in which the applicant Saurabh Singh @ Saurabh Yadav and co-accused Vishnu Kumar Gupta both were found equally liable and held guilty, as such, it cannot be said that no prima facie offence is made out against the applicant. 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 to 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.

8- 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 applicant 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.

9- The relief as sought by the applicant through the instant application is hereby refused.

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

Order Date :- 7.11.2023

Shubham