

Court No. - 89

Case :- APPLICATION U/S 482 No. - 32415 of 2023

Applicant :- Tarun And Another

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Thakur Prasad Dubey,Ratnesh Kumar Mishra

Counsel for Opposite Party :- G.A.,Raksha Chauhan,Upendra Kumar Singh

Hon'ble Deepak Verma,J.

1. Heard learned counsel for the applicants, learned counsel for the opposite party no. 2 and learned A.G.A. for the State.

2. This application under Section 482 Cr.P.C. has been filed by the applicant to quash the summoning order dated 30.06.2023 passed by the Additional Civil Judge (Junior Division), Judicial Magistrate, Court No. 2, Fatehpur in Case No. 542 of 2022 (State vs. Tarun and others), pending before the Additional Civil Judge (Junior Division), Judicial Magistrate, Court No. 2, Fatehpur, arising out of Case Crime No. 245 of 2021, under Sections 506, 394, 376-D IPC, Police Station- Malwa, District- Fatehpur as well as the entire proceedings of Case No. 542 of 2022 (State vs. Tarun and others), pending before the the Additional Civil Judge (Junior Division), Judicial Magistrate, Court No. 2, Fatehpur, arising out of Case Crime No. 245 of 2021, under Sections 506, 394, 376-D IPC, Police Station- Malwa, District- Fatehpur.

3. Learned counsel for the applicants submits that summoning order dated 30.06.2023 is an abuse of process of court and liable to be set aside. He next submits that instant first information report was lodged by opposite party no. 2 against the applicants under Section 506, 394, 376-D IPC in the year 2021, thereafter, Investigating Officer submitted final report in the aforesaid case, thereafter, opposite party no. 2 filed protest application and on the protest application, applicants have been summoned under the aforesaid sections. He next submits that perusal of statements of the victim recorded during investigation under Sections 161 & 164 Cr.P.C., do not disclose any offence against the applicants and learned Magistrate without considering the statements of the victim and independent witnesses in most arbitrary manner summoned the applicants under the aforesaid sections.

4. Per contra, learned A.G.A. as well as counsel for the opposite party no. 2 oppose the submissions raised by learned counsel for the applicants. Counsel for the opposite party no. 2 submits that on perusal of statements of the victim recorded under Sections 161 & 164 Cr.P.C., prima facie, offence under aforesaid sections is made out. Learned Magistrate has rightly summoned the applicants under the aforesaid sections.

5. Considered the arguments raised by learned counsel for the applicants and perused the entire records. Submissions raised by learned counsel for the applicants that instant first information report has been lodged on account of some property dispute and the same has been lodged only to harass the applicants and statements recorded under Sections 161 & 164 Cr.P.C. are not supporting each other, cannot be examined at this stage. Prima facie, on perusal of statements of victim recorded under Sections 161 & 164 Cr.P.C., offence under aforesaid sections is made out against the applicants and at this stage it cannot be said that no offence is made out against the applicants. Moreover, other submissions raised by counsel for the applicants are disputed questions of fact and sitting under 482 Cr.P.C. jurisdiction, this Court has no power to examine the facts.

6. In view of the above, in the light of judgment of the Apex Court in the matters of **R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P.Sharma, 1992 SCC (Cr.) 192 and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283**, no ground for quashing the proceedings of the aforesaid case, is made out which may call for any interference by this Court in exercise of its inherent power under Section 482 Cr.P.C. as the same do not suffer from any illegality or infirmity.

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

Order Date :- 22.11.2023

Aditya