

Court No. - 89

Case :- APPLICATION U/S 482 No. - 32743 of 2023

Applicant :- Nitin

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Harish Kumar Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma,J.

1. Heard learned counsel for the applicant; learned A.G.A. for the State and perused the record.

2. The present 482 Cr.P.C. application has been filed to quash the charge sheet dated 15.04.2023; cognizance order dated 22.05.2023 as well as entire proceedings of S.T. No. 51 of 2023 (State Vs. Afsar and Others) arising out of Case Crime No.298 of 2023, under Sections 376, 506, 120-B I.P.C. and 3/4 POCSO Act, P.S. Baghpat, District Baghpat, pending in the court of Additional District and Sessions Judge/Special Judge (POCSO) (Exclusive Court) Baghpat.

3. Counsel for the applicant submits that no offence against the applicant is disclosed and the present prosecution has been instituted with a malafide intention for the purposes of harassment. During investigation, the statement has been recorded under Sections 161 Cr.P.C. and 164 Cr.P.C., no allegation has been made against the applicant. All allegation is against the co-accused.

4. Learned A.G.A. vehemently opposed the prayer for quashing the proceedings of the aforesaid case and submitted that submission of the applicant is based on factual dispute. The trial court has to examine the same. This Court under Section 482 Cr.P.C. has no power to examine the factual dispute of the matter.

5. The Apex Court in the case of **Mohd. Allauddin Khan Vs. State of Bihar and others** reported in (2019) 6 SCC 107 has held in para No.14 as follows:-

"14. In our view, the High Court had no jurisdiction to appreciate the evidence of the proceedings under Section 482 of the Code Of Criminal Procedure, 1973 (for short "Cr.P.C.") because whether there are contradictions or/and inconsistencies in the statements of the witnesses is essentially an issue relating to appreciation of evidence and the same can be gone into by the Judicial Magistrate during trial when the entire evidence is adduced by the parties. That stage is yet to come in this case."

6. The Apex Court in **Priti Saraf and another Vs. State of NCT of Delhi and Another** reported in AIR 2021 SC 1531 has held that:

"To exercise powers under Section 482, complaint in its entirety have to be examined on basis of allegation made in complaint/FIR/Charge sheet. High Court at that stage not under an obligation to go into matter or examine its correctness. Whatever appears on face of

complaint/FIR/charge sheet to be taken into consideration without any critical examination of same. Offence ought to appear ex facie on complaint/FIR/charge sheet and other documentary evidence, on record. It is thus settled that exercise of inherent power of High Court is an extraordinary power which has to be exercised with great care and circumspection before embarking to scrutinize complaint/FIR/charge sheet in deciding whether case is rarest of rare case, to scuttle prosecution at its inception. Whether the allegations in the complaint are otherwise correct or not, has to be decided on the basis of the evidence to be led during the course of trial. Simply because there is a remedy provided for breach of contract or arbitral proceedings initiated at the instance of the appellant, that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy, and the initiation of criminal proceedings, in any manner, will be an abuse of the process of the court for exercising inherent powers of the High Court under Section 482 Cr.P.C. for quashing such proceedings."

7. From the perusal of the material on record and looking into the facts of the case at this stage it cannot be said that no offence is made out against the applicant. From the statement of victim recorded under Sections 161 Cr.P.C. and 164 Cr.P.C., prima facie discloses offence alleged against the applicant and other witnesses also supporting the prosecution case. All the submissions made at the bar relate to the disputed questions of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C.

8. 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.

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

Order Date :- 4.12.2023

Meenu Singh