

Court No. - 88

Case :- APPLICATION U/S 482 No. - 32613 of 2023

Applicant :- Ramdhani And Another

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

Counsel for Applicant :- Anil Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

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

2-This application under Section 482 Cr.P.C. has been filed by the applicants to quash the summoning order dated 24.04.2023 as well as proceedings of Complaint Case No. 5628 of 2022 (Sunita Versus Ramdhani and another), under Sections 323, 504, 506 I.P.C., Police Station-Sidhari, District-Azamgarh, pending in the court of Judicial Magistrate F.T.C./Mahila, Azamgarh, District-Azamgarh.

3-It is argued by learned counsel for the applicants that daughter of applicant no.1 lodged F.I.R. on 26.08.2022 with regard to alleged incident dated 22.08.2023 against Sunita (opposite party no.2) and six other accused persons, namely, Nagendra Kannaujiya, Siklesh Kannaujiya, Asha Devi, Antima, Dharmendra and Ravindra, who are husband, father-in-law, mother-in-law, sister-in-law and brothers-in-law of the informant respectively for the alleged offence under Sections 498-A, 354, 504 I.P.C. and Section 3/4 Dowry Prohibition Act, in which after culmination of investigation charge sheet was submitted on 15.12.2022 against accused persons of the said case, on which the Magistrate concerned took cognizance on 05.08.2023. Therefore, opposite party no. 2 in order to settle her personal score, moved an application under Section 156(3) Cr.P.C. dated 11.10.2022 against the applicants and five other family members of the applicants, which was treated as complaint vide order dated 17.11.2022 and after recording the statement under Section 200 and 202 Cr.P.C. applicants have summoned to face trial under Sections 323, 504, 506 I.P.C. On the

strength of aforesaid facts mains substratum of argument of learned counsel for the applicants is that criminal proceeding of this case is nothing but a counter blast version of the F.I.R. dated 26.08.2022 lodged by the daughter of applicant no.1, therefore, under the facts and circumstances of the case, impugned summoning order as well as impugned criminal proceeding against the applicants is liable to be quashed by this Court.

4-Per contra, learned Additional Government Advocate for the State 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.

5-After having heard the submissions of the learned counsel for the parties and perusing the entire record, I find that it is not disputed that from the side of the applicants, F.I.R. dated 26.08.2022 was lodged and from the side of opposite party no.2 complaint has been filed as noted above. I also find that in the complaint not only the allegation of assault but allegation of outraging the modesty of complainant by disrobing her has also been levelled and as per her injury report, she has received five injuries on her body and in order to ascertain the nature of injuries, x-ray was also advised. 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.

6-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.

7-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.

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

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

Order Date :- 28.10.2023/Kashifa