Court No. - 90

Case :- APPLICATION U/S 482 No. - 32810 of 2023

Applicant :- Rehan Khan And 2 Others
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Pranava Kumar
Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Pathak,J.

1. Heard learned counsel for the applicants and the learned A.G.A.

2. The applicants has invoked the inherent jurisdiction of this Court under Section 482 Cr.P.C. to quash the entire proceeding and charge-sheet dated 17.05.2020 as well as cognizance and summoning order dated 17.12.2020 passed by Additional Chief Judicial Magistrate, Court No. 8th, Bareilly in Case No. 1357 of 2020, State vs. Rehan and Others, arising out of Case Crime No. 0183 of 2020, under Section 323, 504 I.P.C., Police Station Cantt., District Bareilly pending in the Court of Additional Chief Judicial Magistrate, Vth, Bareilly.

3. A short submission has been advanced by learned counsel for the applicants is that the charge-sheet no. 156 of 2020 has been submitted by the Investigating Officer arraigning the present applicants only under Section 323 and 504 I.P.C. which are non-cognizable/bailable offence, therefore, as per provision enunciated under Explanation to Section 2 (d) Cr.P.C. present amatter should have been treated as a complainant and referred to the learned Magistrate concerned for further proceeding.

4. I find substance in the submission as raised by learned counsel for the applicants. For ready reference, Section 2 (d) Cr.P.C. is quoted herein below :-

*"**Definitions**.-- In this Code, unless the context otherwise requires, --*

(a).....

(b).....

(c).....

(d)'complaint' means any allegation made orally or in writing to a Magistrate, with a view to his taking action under Section Code, that some

person, whether known or unknown, has committed an offence, but does not include a police report.

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."

5. Bare perusal of Section 2(d) Cr.P.C. clearly reveals that the police report, in case, discloses non-cognizable offence, same shall be treated as a complaint. In the instant matter, an F.I.R., being Case Crime No. 0183 of 2020 dated 25.10.2020, has been lodged by opposite party no. 2 under Section 323, 307, 504 I.P.C., however, after due investigation, the Investigating Officer has submitted the charge-sheet no. 156 of 2020 dated 17.05.2020 arraigning the present applicants only under Section 323, 504 I.P.C. which are non-cognizable/bailable offence. Therefore, as per law enunciated under Section 2(d) Cr.P.C., police report (charge-sheet) should have been treated as a complaint and the matter should be referred to the Judicial Magistrate concerned for trial of the said matter. However, learned Additional Chief Judicial Magistrate has taken the cognizance on the police report in a casual manner and issued the summoning order dated 17.12.2020.

6. Having considered the provisions of law as enunciated under Section 2 (d) Cr.P.C. in light of the fact that charge-sheet has been submitted under the non-cognizable offence, the order dated 17.12.2020, passed by the Additional Chief Judicial Magistrate, taking the cognizance on a police report is non est in the eyes of law and clear cut an abuse of process of Court, therefore, deserves to be quashed.

7. As such, instant application is **allowed**. Order impugned dated 17.12.2020 passed by the Additional Chief Judicial Magistrate in Case No. 1357 of 2020, State vs. Rehan and Others, arising out of Case Crime No. 0183 of 2020, under Section 323, 504 I.P.C., Police Station Cantt., District Bareilly is hereby quashed and the matter is remitted to the concerned Chief Judicial Magistrate to pass an order in light of the provisions as enunciated under Section 2(d) Cr.P.C.

Order Date :- 6.11.2023
VR

Digitally signed by :-
VIBHA RATAN
High Court of Judicature at Allahabad