

Court No. - 91

Case :- APPLICATION U/S 482 No. - 33713 of 2023

Applicant :- Khush Mohamamd And 2 Others

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

Counsel for Applicant :- Amar Nath Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar,J.

1. Counter affidavit filed today is taken on record.
2. Heard learned counsel for the applicants and learned AGA for the State.
3. This application u/s 482 Cr.P.C. has been filed by the applicants with the prayer to quash the charge sheet dated 29.11.2019 as well as cognizance/summoning order dated 13.06.2023 as well as the entire proceeding of Criminal Case No.8139 of 2023, arising out of NCR No.50 of 2018, under Sections 323, 504, 506 IPC, Police Station Baghauchghat, District Deoria, pending in the court of A.C.J.M., Court No.19, Deoria.
4. Learned counsel for the applicants submits that on the false and frivolous allegation, the F.I.R. has been lodged and the Investigating Officer after completing investigation has submitted charge sheet for the offence under Sections 323, 504, 506 IPC and the learned Magistrate has taken cognizance mechanically as a State case, which is in violation of the provisions contained under Section 2(d) Cr.P.C.. Further submission is that Sections 323, 504, 506 IPC are not cognizable as in cognizance order, it has not been cleared/specified by the concerned Magistrate by the offence under Section 156 part-I & II is made out. Further submission is that continuation of the aforesaid proceeding is nothing but an abuse of process of Court.

5. On the other hand, learned AGA has opposed the prayer but could not dispute the aforesaid fact.
6. From the perusal of the impugned order of taking cognizance, it is apparent that the concerned Magistrate has not specified as to whether the cognizance is being taken for the offence under Section 506 IPC part-I & part-II. Cognizance has been taken mechanically without application of mind and against the principles of law, which is not sustainable in the eye of law and the order is set aside with the direction to the court concerned to pass an order afresh in accordance with law.
7. In view of the such facts, the order dated 13.06.2023 is here by set aside.
8. Accordingly, the instant application u/s 482 Cr.P.C. is **disposed off**.

Order Date :- 17.10.2023

Sanjeet