

Court No. - 92

Case :- APPLICATION U/S 482 No. - 26807 of 2021

Applicant :- Intezaar Ahmad And 2 Others

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

Counsel for Applicant :- Mashaluddin Shah

Counsel for Opposite Party :- G.A.,Rajesh Kumar Gautam

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Mashaluddin Shah, learned counsel for the applicants, Sri Ravindra Pratap Singh, Advocate holding brief of Sri Rajesh Kumar Gautam, learned counsel for opposite party no.2 and Sri R.K.Soni, learned AGA for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the summoning order dated 20.09.2021 and the entire proceeding of Complaint Case No. 68 of 2019 (Shakila vs. Intezaar and others), under Sections 323, 504, 427 IPC, P.S. Zafrabad, District Jaunpur, pending before the Additional Chief Judicial Magistrate-4th, Jaunpur.

3. Learned counsel for the applicants submits that the applicants have been falsely implicated in the present case due to ulterior motive by the opposite party no.2. He further submits that the applicants no.2 and 3 are the married ladies residing with their husband in Mumbai. He further submits that on the date of incident, the applicant no.1 was going to Saudi Arabia, a copy of ticket has been annexed as annexure-6 to the instant application, which shows that boarding time at Varanasi was 09:35 A.M. whereas the incident has occurred on 22.11.2018 at 03:00 A.M. in the morning. He further submits that since he was to catch the flight, it was not possible for him to be present at the place of incident. In view of the aforesaid submission, learned counsel for the applicants seeks quashing of the entire proceedings arising out of the said complaint against the applicants herein.

4. Per contra, learned counsel for opposite party no.2 submits that the distance between Varanasi Airport and the place of incident is merely 50 Kms., which can be covered within one hour. Therefore, the plea of alibi, which is sought to be pleaded by the applicant no.1 herein is misfounded. Learned counsel for opposite party no.2 further submits that merely by stating that the applicants no.2 and 3 are married ladies, it cannot be said that they were not present at the spot. In fact, they were present on the spot and committed the offence as alleged against them. Learned counsel for opposite party no.2 further submits that

the learned Magistrate after taking all materials available on record in consideration i.e. the complaint and the statements recorded under Sections 200 and 202 Cr.P.C. had found a prima facie case against the applicants, therefore, the impugned summoning order has been passed by the learned Magistrate. Therefore, there is no illegality in the summoning order passed by the learned Magistrate. Learned counsel for opposite party no.2 has also produced a copy of NCR registered against the opposite party no.2, on which no action was taken, therefore, the said complaint was filed by the opposite party no.2, which has been duly noted in the summoning order.

5. Learned counsel for the State submits that from the perusal of the complaint as well as the statements recorded under Sections 200 and 202 Cr.P.C. and the material available before him, it cannot be said that no offence as alleged against the applicants herein, is made out. Therefore, no interference is called for by this Court while exercising the jurisdiction under Section 482 Cr.P.C.

6. Having heard the rival submissions made by learned counsel for the parties, this Court has carefully perused the record of the case and from careful perusal of the complaint as well as the statements under Sections 200 and 202 Cr.P.C., a prima facie case is made out against the applicants. So far as the defence plea of alibi, which has been tried to be set out by the applicants that they were not present on the place of incident, which is their defence, which has to be considered and proved during the trial. Therefore, since the incident is of at 03:00 A.M. at Jaunpur and the Varanasi Airport is just 50 Kms. from the place of incident, it cannot be said that the applicants could not have reached the airport within the duration of six hours. Therefore, the said plea with regard to alibi, prima facie is not indicative of non-presence of the applicants herein. The applicants have failed to provide any material to establish that applicant nos. 2 and 3 were not present on the place of the incident. Merely they are married, their presence on the place of incident cannot be ruled out.

7. In view thereof, this Court does not find any illegality in the summoning order issued against the applicants and the instant application under Section 482 Cr.P.C. is, accordingly, **dismissed** in the light of judgments of Apex Court in **R. P. Kapoor Vs. State of Punjab, AIR 1960 S.C. 866; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] and Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others : 2021 SCC OnLine SC 315.**

Order Date :- 17.10.2023/Ashish Pd.