

Court No. - 88

Case :- APPLICATION U/S 482 No. - 35235 of 2023

Applicant :- Balak Ram

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

Counsel for Applicant :- Anuj Bajpai

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

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

2. Present application under Section 482 Cr.P.C. has been filed seeking quashing of charge-sheet dated 08.04.2017, summoning order dated 15.01.2018 and order dated 22.05.2019 passed by Additional Chief Judicial Magistrate, Court No. 38, Shahjahanpur in Case No. 17 of 2018 arising out of case crime no. 0174 of 2017, under Sections 308 and 323 IPC, P.S. Gadiya Rangeen, District Shahjahanpur as well as order dated 16.03.2021 passed by Special Judge (S.C./S.T.) Act, Shahjahanpur in criminal revision no. 169 of 2019.

3. The basic facts which are required to be stated are that in this case FIR was lodged on 12.03.2017 against the applicant and other accused persons namely Arun, Rohit and Vipin, in which after culmination of investigation charge-sheet has been submitted on 15.02.2017 against accused persons including the applicant, on which the concerned court below took cognizance on 15.01.2018 and summoned the accused persons. Subsequently, supplementary charge-sheet dated 22.12.2017 has been submitted by the investigating officer only against the co-accused Vipin, Arun and Rohit, under Sections 308 and 323 IPC. Thereafter, applicant moved an application for cancelling the cognizance order dated 15.01.2018 on the basis of supplementary charge-sheet, which was rejected by the Magistrate concerned vide order dated 22.05.2019, against which applicant has preferred criminal revision no. 169 of 2019 which has been dismissed vide order dated 16.03.2021.

4. Submission of learned counsel for the applicant is that

since the supplementary charge-sheet dated 22.12.2017 has not been filed against the applicant, therefore, charge-sheet dated 15.04.2017 and cognizance/summoning order dated 15.01.2018 are liable to be quashed.

5. Per contra, learned A.G.A. for the State vehemently opposed by contending that since first charge-sheet dated 15.04.2017 has been filed against the applicant, therefore, there is no illegality in taking cognizance of the offence.

6. Having heard the submission of learned counsel for the parties and considering the over all facts of the case, this Court is of the view that in the light of supplementary report submitted after further investigation under Section 173 (8) Cr.P.C., the charge sheet/police report under Section 173 (2) Cr.P.C., can not be ignored at this stage in view of the judgment of the Apex Court in the matter of **Vinay Tyagi Vs Irshad Ali (2013) 5 SCC 762** and both the police reports (charge sheet and supplementary report) shall be taken into consideration at the appropriate stage of framing of charge. The significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation, hence prima facie case is made out against the applicant.

7. In view of the above, I do not find any illegality in the impugned orders and criminal proceeding against the applicant pursuant to charge-sheet dated 15.04.2017.

8. Hence, the application lacks merits, and is accordingly, ***dismissed.***

Order Date :- 18.10.2023

S.A.