

**Court No. - 88**

**Case :-** APPLICATION U/S 482 No. - 34154 of 2023

**Applicant :-** Jay Prakash Upadhyay @ Chhunnan

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

**Counsel for Applicant :-** Surendra Kumar Chaubey

**Counsel for Opposite Party :-** G.A.

**Hon'ble Sanjay Kumar Singh,J.**

1. Heard learned counsel for the applicant, learned A.G.A. for the State of U.P./opposite party no.1 and perused the record.

2. The instant application under Section 482 Cr.P.C. dated 03.09.2023 has been preferred by the applicant with a prayer to quash the charge sheet dated 13.01.2010, cognizance order dated 08.02.2010 and proceedings of Case No. 1372 of 2021 (State Vs. Jay Prakash Upadhyay @ Chhunnan) arising out of Case Crime No. 684 of 2008, under Sections 147, 148, 149, 307, 504, 506 I.P.C. and Section 7 of Criminal Law Amendment Act, Police Station-Kachhawan, District-Mirzapur, pending in the court of Additional Civil Judge (Junior Division) VIth, Mirzapur.

3. Brief facts of the case which are required to be stated are that opposite party no.2 lodged F.I.R. on 16.12.2008 against Nagesh Upadhyay, Bhole Upadhyay, Dilip Tiwari @ Deepu and Manoj Dubey. After culmination of investigation charge sheet dated 27.02.2009 was submitted against aforesaid four named accused persons and so far as applicant Jay Prakash Upadhyay @ Chhunnan is concerned, charge sheet has been submitted against him on 13.01.2010, on which Magistrate concerned took cognizance on 08.02.2010. The co-accused after facing trial have been acquitted vide judgment and order dated 29.01.2014, but the applicant did not appear before the trial court to face trial, whereas, he was very much aware about this case. In the year 2010, he had filed Criminal Misc. Writ Petition No. 264 of 2010, in which interim protection was granted

to him by coordinate Bench of this Court vide order dated 08.01.2010 during investigation period.

4. Main substratum of argument of learned counsel for the applicant is that co-accused persons have been acquitted as noted above, therefore, charge sheet dated 13.01.2010 against the applicant is liable to be quashed.

5. On the other hand, learned A.G.A. vehemently opposed the aforesaid submission of learned counsel for the applicant by contending that the applicant is absconding since 2010. Even after acquittal of co-accused persons in the year 2014, he did not appear before the trial court and instant application dated 03.09.2023 has been moved after an inordinate delay of about thirteen years.

6. Having heard the submissions of learned counsel for the parties and perusing the record, I find that it is not in disputed that applicant is absconding since 2010 and the instant application has been preferred after inordinate delay of thirteen years. The question as to whether on the acquittal of co-accused, the charge sheet and criminal proceedings pursuant thereto against the remaining co-accused is liable to be quashed under Section 482 Cr.P.C. or not, has been considered and decided by this Court in the case of **Radha Devi and Others Vs. State of U.P. and Another, 2019 SCC OnLine All 4902**, wherein it has been held that acquittal of co-accused in a criminal trial is not admissible under Sections 40 to 43 of the Evidence Act to bar the subsequent trial of the absconding co-accused and cannot hence be deduced as a relevant document while considering the prayer to quash the proceedings against remaining co-accused under section 482 Cr.P.C. The judgment of acquittal will be admissible only to show as to who were the parties in the proceedings or factum of acquittal. As such securing of acquittal by co-accused cannot be considered as relevant circumstances and ground for exercising power under section 482 Cr.P.C., to quash the proceedings as against those accused who has not faced the trial. The judgment not inter parties cannot justify the

invocation of the doctrine of issue stopple under the Law.

7. It is also well settled that power of quashing the criminal proceedings at the pre-trial stage should be exercised very sparingly and with circumspection and that too in the exceptional and rare case. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice. As such the inherent powers of the High Court cannot normally be invoked, unless such materials are of an unimpeachable nature, which can be translated into legal evidence in the course of trial.

8. As a fallout and consequences of aforesaid discussion, I have no hesitation in holding that even on the acquittal of co-accused, the charge sheet and criminal proceeding pursuant thereto against the remaining co-accused cannot be quashed under section 482 Cr.P.C.

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

**Order Date :-** 5.12.2023

Kashifa