Court No. - 90

Case :- APPLICATION U/S 482 No. - 33910 of 2023
Applicant :- Satya Prakash And 2 Others
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Gaurav Kumar Shukla
Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Pathak,J.

1. Heard learned counsel for the applicants, learned AGA and perused the record.

2. The present applicants have invoked the inherent power of this Court under Section 482 CrPC beseeching the quashing of order dated 19.11.2020 and order dated 13.7.2023 passed by Additional District and Sessions Judge/Fast Track Court, Budaun in Sessions Trial No. 290 of 2019 (State Vs. Anganlal and others) arising out of Case Crime No. 35 of 2019, under Section 302/34 & 201 IPC, Police Station Bisauli, Budanun pending in the court of learned Additional District Judge/Fast Track Court, Budaun. Further prayer has been made for a direction to trial court below to alter the charge under Section 201 IPC pending in the court of learned Additional District Judge/Fast Track Court, Budaun.

3. The present applicants is aggrieved with the non-judicial approach adopted by the learned trial court while rejecting the application (paper No. 23 Kha) under Section 216 CrPC.

4. Facts culled out from the record are that Opposite Party No. 2 has lodged an FIR, being Case Crime No. 0035/2019 dated 15.2.2019, levelling allegation of murder and causing disappearance of evidence of offence and giving false information to screen offender against the present applicants and one more accused, namely, Anganlal (husband) with an averment that sister of the first informant namely Somwati was married with Anganlal. She has been assassinated by the accused and her body has been tried to be disposed of. The Investigating Officer, after due investigation, has submitted the charge sheet arraigning Anganlal under Section 302 IPC and remaining accused (applicants herein) under Section 201 IPC. Learned Chief Judicial Magistrate has

committed the matter before the Sessions Court with a specific observation that charge sheet has been submitted against Anganlal under Section 302 IPC and against Satya Prakash (applicant No. 1), Smt. Shyamawati (applicant No. 3) and Natthu Lal (applicant No. 2) under Section 201 IPC. Learned trial court, vide order dated 17.8.2019, has framed two charges commonly against all the four accused under Section 302/34 IPC and under Section 201 IPC. Having been aggrieved, the present applicants moved an application dated 18.9.2019 to alter the charges inasmuch as charge sheet has been submitted against them only under Section 201 IPC, therefore, charge under Section 302 has illegally been framed. Learned Additional Sessions Judge, Fast Track Court, Budaun, vide order dated 19.11.2020, has rejected the application with an observation that, in future, after appraisal of prosecution evidence available on record, charge under Section 302 IPC would be altered, if it is found that same has wrongly been framed. As such, trial proceeded. After completion of evidence, the present applicants have moved another application dated 1.7.2023 (paper No. 23 Kha) to alter/delete the charge under Section 302 IPC against the present applicants. Learned trial court, vide order impugned dated 13.7.2023, has rejected the application which is under challenge before this Court.

5. It has been submitted by the learned counsel for the applicants that the application (paper No. 23 Kha) moved on behalf of the present applicants has been rejected in a perfunctory manner without considering the merits of the application in the light of the earlier order dated 19.11.2020 passed by the trial court. Previous application was rejected on the ground that, at later stage, in case, it is found that no case is made out against the applicants under Section 302 IPC, the same shall be altered. It is further submitted that learned trial court has illegally presumed that the present applicants are trying to protract the litigation. The present applicants, who have been arraigned in the charge sheet solely under Section 201 IPC, cannot be forced to face trial under Section 302 IPC, however, the learned trial court miserable failed to consider the prayer made by the present applicants to alter the charge in the light of the evidence available on record.

6. Per contra, learned AGA has vehemently opposed the submissions raised by the learned counsel for the applicants and

supported the order under challenge dated 13.7.2023 and submitted that the evidence of the parties is already complete, therefore, at this stage, there is no justification to alter the charges.

7. Having considered the rival submissions advanced by the learned counsel for the applicant as well as learned AGA and perusal of record, it is manifested that in the charge sheet No. 64/19 dated 24.3.2019, the present applicants have been arraigned only under Section 201 IPC whereas Anganlal has been arraigned under Section 302 IPC. Learned Chief Judicial Magistrate has committed the matter, vide order dated 6.7.2019, before the Sessions Court under the sections as mentioned in the charge sheet. Charges have been framed, however, vide order dated 17.8.2019, under Section 302/34 and 201 IPC commonly against all the four accused. While passing the order dated 19.11.2020, learned trial court has observed that charges can be altered at any stage, in case, the court finds, after appraisal of prosecution evidence, that no case is made out under Section 302 IPC against the present applicants. Evidence of the parties having been completed, the present applicants have moved an application (paper No. 23 Kha) under Section 216 CrPC to alter the charges against them on the ground that on the material available on record, the guilt of the present accused-applicants, prima facie, cannot be proved under Section 302 IPC. The statement of the witnesses has been filed by the applicants in the instant matter and tried to submit before this Court that by stretch of any imagination, no case is made out against the present applicants for the charge of murder under Section 302 IPC. The learned trial court, while rejecting the application under Section 216 CrPC, has neither discussed any material nor assigned any justifiable grounds in refusing the prayer for alteration of charges. Learned trial court has got ample power to alter/addition of charges at any stage of trial. Therefore, it is expected that after appraisal of material available on record, in case, the trial court comes to the conclusion that no case is made out under the sections, wherein the applicants have been called upon, he can alter the charge in exercise of it's power under Section 216 CrPC. While considering the application filed under Section 216 CrPC to alter the charges, learned trial court should have considered the material on record to examine the grounds for substraction or addition of charges in the light of the

provisions as enunciated under Section 216 CrPC. Mere citing of the previous evidence, which was filed along with charge sheet, cannot be treated to be sufficient ground for rejection of the application under Section 216 CrPC. Learned court below has utterly failed to consider the observation made by his predecessor in order dated 19.11.2020 wherein the matter was kept open to reconsider the charges in the light of the evidence to be adduced by the prosecution. Learned trial court has simply referred the rejection order dated 19.11.2020 without analyzing it's sanctity. Even assuming that the order dated 19.11.2020 has not been assailed before the higher court, it will not affect the ample power of the trial court to alter the charges at any stage of trial in exercise of jurisdiction under Section 216 CrPC.

8. In this conspectus, as above, this Court, in order to secure the ends of justice in exercise of inherent jurisdiction under Section 482 CrPC, finds justifiable ground to interfere in the order under challenge. As such, instant application is allowed and the order impugned dated 13.7.2022 passed by Additional District and Sessions Judge/Fast Track Court, Budaun in Sessions Trial No. 290 of 2019 (State Vs. Anganlal and others) arising out of Case Crime No. 35 of 2019, under Section 302/34 & 201 IPC, Police Station Bisauli, Budanun, is hereby quashed with an observation that the application i.e. Paper No. 23 Kha moved on behalf of the present applicants is hereby restored to its original number and the parties are relegated before the trial court, who shall decide the said application de novo after giving opportunity of hearing to the parties concerned and appraising the evidence on record, in accordance with law.

9. It is expected that said application shall be decided as expeditiously as possible preferably within a period of ten days from the date of production of certified copy of this order, which shall be filed within a week from today.

10. It is further provided that for a period of twenty (20) days from today or till the decision is taken on the application (23Kha), whichever is earlier, no coercive action shall be taken against the present applicants under Section 302 IPC.

Order Date :- 17.10.2023/vinay

Digitally signed by :-
VINAY KUMAR
High Court of Judicature at Allahabad