

Court No. - 91

Case :- APPLICATION U/S 482 No. - 34027 of 2023

Applicant :- Sobaran Singh And Another

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

Counsel for Applicant :- Ashish Kumar, Rakesh Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar, J.

1. Heard learned counsel for the applicants and learned AGA for the State.

2. The present application u/s 482 Cr.P.C. has been filed by the applicants with the prayer to quash the impugned summoning order dated 22.10.2010 as well as the entire proceeding of Complaint Case No. 553 of 2010, under Sections 363, 368, 120-B IPC, Police Station Banpur, District Lalitpur.

3. Learned counsel for the applicants submits that on the false and frivolous allegation, an application u/s 156(3) Cr.P.C. was moved on behalf of the father of the victim, which was treated as a complaint case vide order dated 22.10.2010 and the applicants, namely, Sobaran and Rajendra along with other co-accused Sujana Singh were summoned to stand trial for the offence under Sections 363, 368, 120-B IPC with regard to the incident dated 13/14.09.2010 during night at 12:00 to 02:00 AM. Further submission is that on the same set of facts, an F.I.R. was lodged by the prosecutrix on 29.03.2011 regarding the same incident against the applicants including the some other accused person and after completing the investigation, the Investigating Officer has submitted charge sheet and cognizance was taken and the trial proceeded and after the trial, the learned Additional Sessions

Judge, F.T.C., Lalitpur vide order dated 08.10.2015, acquitted the applicants Sobaran and Rajendra along with other co-accused person bearing Case Crime No.160 of 2010, under Sections 363, 366, 506, 120-B IPC and the proceeding under Section 344 Cr.P.C. were directed to be initiated for perjury. The main submission of learned counsel for the applicants is that as the applicants have been tried and acquitted on merit, the entire criminal proceeding of aforesaid complaint case is nothing but an abuse of process of Court and in the teeth of Article 20(2) of the Constitution of India and Section 300 Cr.P.C.

4. On the other hand, learned AGA has opposed the prayer but could not dispute the aforesaid facts.

5. I have considered the rival submission made by the learned counsel for the parties and perused the record of the case.

6. Article 20(2) of the Constitution of India clearly states that "*No person shall be prosecuted and punished for the same offence more than once*".

7. Section 300(1) Cr.P.C. is quoted as under:-

"(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of section 221, or for which he might have been convicted under sub-section (2) thereof."

8. Having regard to the facts and circumstances of the case, after perusing the entire record and having considered the submissions made by the learned counsel for the parties, I am of the view that

the regarding the incident dated 13/14.09.2010, an F.I.R. was lodged and charge sheet was submitted and cognizance was taken and the applicants were tried and after the evidence let by the prosecution, the case was decided on merit, in which the applicants were acquitted by the court, which has attained finality as no appeal is alleged to have filed pending against the order of acquittal and judgement. In view of the provisions as contained in Article 20(2) and Section 300(1) Cr.P.C., continuation of the trial in complaint case no.553 of 2010, under Sections 363, 368, 120-B IPC is nothing but an abuse of process of Court. Hence, the prayer made in the application is liable to be allowed.

9. Accordingly, the present application u/s 482 Cr.P.C. is **allowed**.

10. The entire proceedings including the impugned summoning order dated 22.10.2010 as well as the entire proceeding of Complaint Case No. 553 of 2010, under Sections 363, 368, 120-B IPC, Police Station Banpur, District Lalitpur is hereby quashed against the applicants.

Order Date :- 8.11.2023

Sanjeet