

Court No. - 90

Case :- APPLICATION U/S 482 No. - 33911 of 2023

Applicant :- Jayant Chawla

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

Counsel for Applicant :- Aushim Luthra, Atharva Dixit, Sr.
Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Pathak, J.

1. Heard Sri Manish Tiwari, learned Senior Advocate assisted by Sri Atharva Dixit, learned counsel for the applicant and learned A.G.A. for the State and perused the record.

2. The present applicant has invoked the inherent power of this Court under Section 482 Cr.P.C. assailing the order dated 18.07.2023 passed by the learned Additional Civil Judge Junior Division-3/Judicial Magistrate Gautam Budh Nagar in Case No.4005 of 2022 (State of U.P. Vs. Jayant Chawla) arising out of Case Crime No.0150 of 2022, under Section 420 IPC and Section 66D of Information Technology (Amendment) Act, 2008, Police Station NOIDA Sector-58, District Gautam Budh Nagar, pending in the court of learned Additional Civil Judge Junior Division-3/Judicial Magistrate Gautam Budh Nagar, rejecting the discharge application dated 17.04.2023 moved on behalf of the present applicant.

3. Facts culled out from the record are that one Mr. Gunjan Ahuja happens to be the Director of the company namely Hard Shell Technologies Private Limited has lodged an FIR, being Case Crime No.0150 of 2022 dated 08.04.2022, levelling allegation of cheating and deleting the data of the company with an averment that present applicant namely Jayant Chawla and two other co-accused, who were serving as a Director in the company have left the company one year before without any prior notice while enquiry qua their involvement in financial embezzlement and fraud/manipulation in record of company was continuing. It is further alleged that the present applicant was responsible to save/restore the data and secures the server of the company. When he left the company, he has never surrendered the related documents, server code and server password to the company, however, at later stage, he has misused the same and deleted all the data and server

of the company intending to finish/destroy it. In the FIR, two persons were also named as an accused namely Pankaj Kumar and Kamlesh Kumar. Investigating Officer, after due investigation, has submitted the charge sheet only arraigning the present applicant as an accused. During pendency of the case, present applicant has moved a discharge application dated 17.04.2023 taking several grounds to prove his innocence. Learned trial court, vide order impugned dated 8.07.2023, has rejected the discharge application, which is under challenge before this Court.

4. Solitary submission raised by learned Senior Advocate that the order impugned passed by the learned trial court is perverse inasmuch as facts as discussed in the order impugned are not related with the case which have been mentioned in the FIR lodged on behalf of the opposite party No.2. It is further submitted that the learned trial court has passed the order without application of mind and without considering the case of the FIR and the grounds of discharge as averred by the present applicant in his discharge application dated 17.04.2023.

5. Per contra, learned A.G.A. has vehemently opposed the submission as raised by learned Senior counsel for the applicant and supported the order impugned dated 18.07.2023.

6. Having considered the rival submissions advanced by learned counsel for the applicant and learned A.G.A., it is manifested that the FIR has been lodged on behalf of the opposite party No.2 with respect to the occurrence of alleged offence wherein Data and server of the company has allegedly been deleted/corrupted by the accused (applicant herein), however, while entertaining the discharge application dated 17.04.2023 moved on behalf of the present applicant, learned trial court has discussed the merits of some other crime which relates to fraud wherein forged product of the Sony company and Samsung company were being sold in the market by some of the accused namely Ashwini Kumar, Gaurav, Brijesh, Prem Kishore and Mohit Kumar, who are allegedly operating as a gang and Ashwini Kumar has been shown as a gang leader. I failed to understand as to how these facts are relevant in deciding the discharge application moved on behalf of the present applicant in Case Crime No.0150 of 2022 wherein allegation has been made to delete the data of the company namely Hard Shell Technologies Private Limited. In the penultimate paragraph, learned trial court has discussed the submissions as raised on behalf of the prosecution and in last paragraph, he has recorded his conclusion, however, in the preceding paragraph, learned trial court has utterly failed to discuss the case of the present applicant

in the light of the averment as made in the FIR, being Case Crime No.0150 of 2022.

7. In this conspectus, as above, I found substance in the submission as raised by learned Senior Advocate. The order impugned passed by the learned trial court is manifestly illegal, unwarranted under the law and tainted with irregularities. He has passed the order without application of mind and given perverse finding qua occurrence of offence as narrated in the FIR, being Case Crime No.0150 of 2022. Therefore, to secure the ends of justice in exercise of inherent jurisdiction under Section 482 Cr.P.C., order impugned dated 18.07.2023 is liable to be quashed.

8. Resultantly, the instant application under Section 482 Cr.P.C. is **allowed**. The order impugned dated 18.07.2023 passed by the learned Additional Civil Judge Junior Division-3/Judicial Magistrate, Gautam Budh Nagar is hereby quashed. Application for discharge dated 17.04.2023 moved on behalf of the present applicant is restored to its original number and the parties are relegated before the trial court to get said application decided denovo in the light of the facts of the offence as mentioned in the FIR, being Case Crime No.0150 of 2022.

9. It is expected that the said application shall be decided expeditiously preferably within a period of one month from the date of production of certified copy of this order, in accordance with law, after giving opportunity of hearing to the parties concerned.

Order Date :- 27.10.2023

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