

Court No. - 88

Case :- APPLICATION U/S 482 No. - 34292 of 2023

Applicant :- Sunil Kumar

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

Counsel for Applicant :- Subhash Chand Kanaujia

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

1-Heard learned counsel for the applicant, learned Additional Government Advocate for the State/opposite party no.1 and perused the record.

2-The instant application under Section 482 Cr.P.C. has been preferred by the applicant with a prayer to quash the charge-sheet dated 27.11.2022 and proceedings of case no. 438 of 2023 (*State vs. Sri Sunil Kumar and others*) arising out of case crime no. 284 of 2022, under Sections 323, 342, 504, 506, 354 Kh I.P.C., Police Station Amapur, District Kasganj pending in the court of Additional Chief Judicial Magistrate, Kasganj.

3-The brief facts of the case which are required to be stated are that the opposite party no. 2, namely, Smt. Rajjo Devi, through an application under Section 156(3) Cr.P.C., lodged a first information report on 01.11.2022 against Sunil Kumar (present applicant), Rajiv Kumar, Kaushal and Bhola for the offence under Sections 323, 324, 325, 342, 354, 307, 504 and 506 I.P.C. making allegation inter-alia of assault by the accused persons. F.I.R. also alleges that with regard to incident dated 01.09.2021, three persons namely Hari Babu, Ram Niwas and Ram Das (from the side of opposite party no. 2) have received serious injuries. After culmination of investigation, charge sheet dated 27.11.2022 has been submitted against the present applicant Sunil and accused persons Rajiv Kumar and Kaushal, on which the learned Magistrate took cognizance on 06.02.2023 and summoned the applicant and other accused persons to face trial.

4-The main substratum of argument of learned

counsel for the applicant is that the opposite party no. 2 had borrowed a sum of Rs. 1,50,000/- from him but did not return the same. On making repeated demands, the applicant was assaulted by the family members of the opposite party no. 2 and her associates, regarding which the applicant had lodged a first information report on 02.09.2021 under Sections 147, 149, 452, 307 and 324 I.P.C. against Ram Niwas, Hari Babu, Ramdas, Omveer, Rana @ Neta, Brijesh and Vineet, in which charge-sheet dated 19.11.2021 has been submitted against Ram Niwas, Hari Babu and Ramdas and they are facing trial. In the said incident, present applicant has also received serious injuries. Thereafter, opposite party no. 2, in order to settle her personal score, lodged the impugned first information report against the applicant and other accused persons on false and concocted allegations, on which the learned Magistrate took cognizance and summoned the applicant to face trial, as such, the impugned charge-sheet dated 27.11.2022 and subsequent criminal proceedings against the applicant are liable to be quashed.

5-Per contra, learned Additional Government Advocate for the State refuting the submissions advanced on behalf of the applicant submitted that upon perusal of F.I.R. and on the basis of the allegations made therein as well as material against the applicant and considering the injury report of the injured, as per prosecution case, the cognizable offence against the applicant is made out. The criminal proceedings against the applicant cannot be said to be abuse of the process of the Court. Hence this application is liable to be dismissed.

6-Having heard the submissions of learned counsel for the parties and examined the matter in its totality, I find that both side have lodged FIRs against each other and both sides have also received injuries. From the side of applicant, applicant has received injuries and as per his medical examination report, the same are grievous in nature and from the side of opposite party no. 2, three persons namely Hari Babu, Ram Niwas and Ram Das have received

injuries. The grounds taken in the application reveal that many of them relate to disputed question of fact. The disputed question of facts and defence of the accused cannot be taken into consideration at this pre-trial stage, which can be more appropriately gone into by the trial court at the appropriate stage. This Court is also of the view that the appreciation of evidence is a function of the trial court. This Court in exercise of power under Section 482 Cr.P.C. cannot assume such jurisdiction and put to an end to the process of trial provided under the law. It is well settled by the Apex Court in catena of judgments that the power under Section 482 Cr.P.C. at pre-trial stage should not be used in a routine manner but it has to be used sparingly, only in such an appropriate cases, where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceedings or where allegations made in First Information Report or charge-sheet and the materials relied in support of same, on taking their face value and accepting in their entirety do not disclose the commission of any offence against the accused.

7-This Court does not find that this case fall in a categories as recognized by the Apex Court for quashing the criminal proceeding of the trial Court at pre-trial stage. Considering the facts, circumstances and nature of allegations against the applicant in this case, the cognizable offence is made out. At this stage it would not be appropriate to adjudge whether the case shall ultimately end in conviction or not. Only prima facie satisfaction of the Court about the existence of sufficient ground to proceed in the matter is required. The impugned criminal proceeding under the facts of this case cannot be said to be abuse of the process of the Court. There is no good ground to invoke inherent power under Section 482 Cr.P.C. by this Court.

8-The relief as sought by the applicant through the instant application is hereby refused.

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

10-Office is directed to send a copy of this order to the opposite party no. 2 for necessary information.

Order Date :- 30.11.2023
Saurabh