

Court No. - 86

Case :- APPLICATION U/S 482 No. - 34865 of 2023

Applicant :- Abhinav Goel

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

Counsel for Applicant :- Devendra Mishra, Arvind Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta, J.

1. Shri Prashant Kumar Yadav, Advocate has filed his vakalatnama on behalf of opposite party no.2 today in Court, which is taken on record.

2. Heard learned counsel for the applicant, learned A.G.A. for the State, Shri Prashant Kumar Yadav, learned counsel for the opposite party no.2 and perused the record.

3. The present application under Section 482 Cr.P.C. has been filed with the prayer to quash the charge-sheet no. 125 of 2017, dated 14.04.2017 and summoning/ cognizance order dated 15.06.2017 as well as entire proceedings of Case No. 9814 of 2017 (State Vs. Abhinav Goel), arising out of Case Crime No. 25 of 2017, under Sections 498-A, 323, 506 IPC read with Section 3/4 of D.P. Act, Police Station Mahila Thana, District Moradabad, pending in the court of Additional Chief Judicial Magistrate, Moradabad.

4. Learned counsel for the applicant has submitted that from perusal of the allegations made in the FIR and the material collected during the course of investigation, no offence is disclosed against the applicant. He has pointed out certain documents and statements in support of his contention and has further submitted that the present case has been instituted with a malafide intention for the purpose of harassment and as such, impugned summoning/ cognizance order as well as entire proceedings be quashed.

5. Learned counsel for the applicants has next submitted that the applicant had already been directed to be released on bail.

6. Per contra, learned AGA as well as learned counsel for the opposite party no.2 has submitted that from perusal of the allegations made in the FIR and the material collected during the course of investigation, prima facie offence is clearly made out against the applicant and as such, impugned summoning/ cognizance order as well as entire proceedings cannot be quashed.

7. From perusal of the material on record and looking into the facts of the case, at this stage, it cannot be said that no offence is made out against the applicant. All the submissions made at the Bar relate to the disputed questions of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C.

8. At this stage, only prima facie case is to be seen in the light of the law laid down by Hon'ble Supreme Court in the cases of ***R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cr.) 192 and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cr.) 283.*** The disputed defence of the accused cannot be considered at this stage.

9. Moreover, the applicant had already been directed to be released on bail and he has got right of discharge under Section 239, 245 or 227 Cr.P.C., as the case may be, through a proper application for the said purpose and he is free to take all the submissions in the said discharge application before the trial court.

10. At this stage, this Court is not in a position to weigh the factual matrix of the case properly and accused-applicant has right to file discharge application before the trial court and the trial court may decide his discharge application, if there is no evidence against him.

11. The prayer for quashing the impugned summoning/ cognizance order as well as entire proceedings is therefore refused.

12. However, it is directed that in case the applicant files an application for discharge before the court below, then the court below shall consider each and every aspect of the matter and shall pass a detailed order on the said application expeditiously in accordance with law after hearing both the parties.

13. With the aforesaid directions, this application under Section 482 Cr.P.C. is finally **disposed of**.

Order Date :- 16.10.2023
Nadim