

Court No. - 88

Case :- APPLICATION U/S 482 No. - 35326 of 2023

Applicant :- Manoj Kumar

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

Counsel for Applicant :- Adil Khan

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

1-Heard learned counsel for the applicant as well as learned Additional Government Advocate for the State/opposite party no.1.

2-This application under Section 482 Cr.P.C. has been filed by the applicant to quash the charge-sheet dated 24.05.2021, cognizance order dated 26.08.2021 and proceedings arising out of Case Crime No. 0191 of 2021, under Sections 498-A, 323 I.P.C. and Section 67 of Information Technology Act, Police Station Ujhani, District Badaun, pending in the court of Chief Judicial Magistrate, Badaun.

3-Brief facts of the case which are required to be stated are that opposite party no.2, who is wife of the applicant lodged F.I.R. on 06.05.2021 under Sections 498-A, 323 I.P.C. and Section 66D of Information Technology (Amendment) Act, 2008 against the applicant and her mother-in-law alleging inter alia that her marriage was solemnized on 23.05.2020 with the applicant, but after their marriage, applicant keeps beating her continuously, due to this reason she lives in her house in Ujhani. F.I.R. also alleges that applicant is defaming her using his mobile no. 9027944894 by creating IDs on Facebook. After culmination of investigation charge sheet dated 24.05.2021 has been submitted only against the applicant, on which Magistrate concerned took cognizance and summoned the applicants vide order dated 26.08.2021 to face trial.

4-Earlier the applicant has preferred an application under Section 482 Cr.P.C. No. 5006 of 2023 for quashing the charge sheet dated 24.05.2021, cognizance order dated 26.08.2021 and

proceedings of the criminal case against him, which was disposed of vide order dated 09.02.2023 of coordinate Bench of this Court, directing the court below to refer the parties to the committed constituted for mediation at district court and for a period of two months protection was granted to the applicant that no coercive action shall be taken against him. Pursuant to order dated 09.02.2023, applicant did not appear before mediation centre. Thereafter, the applicant has again preferred this application under Section 482 Cr.P.C. on 14.09.2023 seeking same reliefs.

5-It is submitted by learned counsel for the applicant that applicant is constable in U.P. Police. Earlier opposite party no. 2 had lodged F.I.R. against the applicant, which was registered as Case Crime No. 16 of 2021 under Sections 498-A, 323, 316, 506 I.P.C. and Section $\frac{3}{4}$ Dowry Prohibition Act, Police Station Kotwali, District Badaun, in which final report was submitted. Thereafter, the applicant has been falsely implicated in the present case. Father of applicant is handicapped person. The allegation against the applicant is false. Under the facts and circumstances of the case, impugned charge-sheet, summoning order and criminal proceeding against the applicant is liable to be quashed by this Court.

6-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, 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.

7-Having examined the matter in its totality, I find that during investigation screenshot of Facebook posts provided by opposite party no.2 was examined by the Investigating Officer, in which allegation of opposite party no.2 against the applicant has been found proved. The extract of

the said post which has been made viral by the applicant in order to defame and lower down the reputation of opposite party no.2 in the society has been made part of the Case Diary, copy of the same has been filed as Annexure No.3 to the affidavit. On perusal of the contents of the same, I find that prima facie offence under Section 66D of Information Technology Act is made out against the applicant. The grounds taken in the application reveal that many of them relate to disputed question of fact. This Court is 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. The disputed questions 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. The applicant has an alternative statutory remedy of moving discharge application at the appropriate stage. At the stage of taking cognizance of the case and summoning the accused, the court below is not required to go into the merit and demerit of the case. Genuineness or otherwise of the allegations cannot be even determined at the stage of summoning the accused.

8-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.

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

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

Order Date :- 28.11.2023

Kashifa