

Court No. - 88

Case :- APPLICATION U/S 482 No. - 35529 of 2023

Applicant :- Mukesh Kumra Punia

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Daya Shanker Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

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

This application under Section 482 Cr.P.C. has been filed by the applicant to quash the order dated 13.07.2023 passed in Complaint Case No. 1386 of 2021 (Deepak Kumar vs. Mukesh and Others) as well as order dated 17.04.2023 passed in Criminal Revision No. 514 of 2022, under Sections 323, 504 and 506 I.P.C., Police Station Modi Nagar District Ghaziabad pending in the court of Additional Chief Judicial Magistrate, Court No. 5, Ghaziabad.

Brief facts of the case which are required to be stated are that opposite party no.2 moved an application under Section 156(3) Cr.P.C. dated 09.09.2021 against the applicant and five others making allegation of assault and outraging her modesty against them. The said application is treated as complaint and after recording the statement of the complainant under Section 200 Cr.P.C and statements of witnesses under Section 202 Cr.P.C, dismissed the complaint vide order dated 07.09.2022 against which opposite party no.2 preferred criminal revision which has been allowed vide order dated 17.04.2023 remanding the matter to the court to pass fresh orders, thereafter, applicant has been summoned vide order dated 13.07.2023 to face trial under Sections 323, 504 and 506 IPC, which is subject matter of challenge in the present application.

It is submitted by learned counsel for the applicant that the applicant has been falsely implicated in this case, no such incident has taken place in the manner as alleged by the opposite party no.2. The complaint has been filed against the applicant on false and concocted allegations. The revisional court has illegally allowed the criminal revision of the complainant without applying judicial mind. No offence is made out against the applicant. Under the facts and circumstances of the case, impugned summoning order, against the applicant is liable to be quashed by this Court.

Per contra, learned Additional Government Advocate for the State refuting the submissions advanced on behalf of the applicant submitted that considering the allegations made in the complaint as well as statement of the complainant and witnesses under Sections 200 and 202 CrPC respectively, 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.

After having heard the submissions of the learned counsel for the parties and perusing the entire record, I find that the grounds taken in the application reveal that many of them relate to disputed question of fact. At the stage of 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.

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 also 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 complaint 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. Power under Section 482 of the Code of Criminal Procedure cannot be exercised where the allegations are required to be proved in court of law. 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.

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.

The relief as sought by the applicant through the instant application is hereby refused, as there is no illegality in the impugned orders.

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

Order Date :- 18.10.2023

A Gautam