

Court No. - 89

Case :- APPLICATION U/S 482 No. - 35495 of 2023

Applicant :- Prabhakar Rai

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

Counsel for Applicant :- Arvind Kumar Upadhyay

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma,J.

1. Heard Sri Arvind Kumar Upadhyay, learned counsel for the applicant and learned AGA for the State.
2. The present 482 Cr.P.C. application has been filed to quash the further proceedings of Case No.5190 of 2023 arising out of Case Crime No.353 of 2022, under Sections 307 of 506 I.P.C., PS Dhanghata, District Sant Kabir Nagar, pending in the Court of Civil Judge (JD), FTC-II/ JM, Sant Kabir Nagar.
3. The contention of learned counsel for the applicant is that instant proceedings initiated against the applicant is abuse of process of Court. Allegation in the FIR is that applicant loaded with fire arm and fired at informant but the same had not hit the injured/informant. Injury report is not supported the facts. Cognizance taken by learned Magistrate is abuse of process of law. Statement recorded under Section 161 Cr.P.C. is also not supported the prosecution case. Investigating Officer has not collected any cogent evidence to prosecute the applicant in the present case.
4. Learned A.G.A. has vehemently opposed the prayer for quashing the proceedings of the aforesaid case and has submitted that the same do not suffer from any illegality or infirmity.
5. From a perusal of the impugned order, it is apparent that the learned Magistrate has passed the said order after having found prima facie case made out against the applicant and cognizable offence is disclosed from the perusal of the complaint as well as the statement of the complainant and its witnesses.
6. Considering the statement raised by applicant's counsel and learned AGA, it is evident that the submission of applicant's counsel is based on disputed question of facts which cannot be considered at this stage. Prosecution story is supported by medical examination report that will be examined by trial court,

as such, it does not appear that no offence has been made out against the applicant.

7. In view of the above, in the light of judgment of the Apex Court in the matters 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**, no ground for quashing the proceedings of the aforesaid case, is made out which may call for any interference by this Court in exercise of its inherent power under Section 482 Cr.P.C. as the same do not suffer from any illegality or infirmity.

8. The present application under Section 482 Cr.P.C. lacks merit and is, accordingly, **dismissed**.

Order Date :- 1.12.2023

Nitin Verma