

Court No. - 86

Case :- APPLICATION U/S 482 No. - 36146 of 2023

Applicant :- Harish And Another

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

Counsel for Applicant :- Anubhav Sinha

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta,J.

1. Supplementary affidavit filed by learned counsel for the applicants today in Court is taken on record.
2. Heard learned counsel for the applicants, learned A.G.A. and perused the record.
3. The present application under Section 482 Cr.P.C. has been filed for quashing the impugned judgment dated 09.05.2023 passed by Additional Sessions Judge, Court No.5, Gautam Budh Nagar in Criminal Revision No. 424 of 2022 (Harish and others Vs. State of U.P. and another) as well as impugned summoning order dated 11.07.2019 passed by Additional Chief Judicial Magistrate-2nd, Gautam Budh Nagar as well as entire proceedings of Complaint Case No. 117 of 2018 (Manveer Vs. Harish and others), under Sections 420, 400 and 120-B IPC, P.S. Badalpur, District- Gautam Budh Nagar, pending in the court of A.C.J.M.-Ist, District Gautam Budh Nagar.
4. Learned counsel for the applicants has submitted that from the perusal of the allegations made in the complaint and the material collected during the course of enquiry, no offence is disclosed against the applicants and the present case has been instituted with a malafide intention for the purpose of harassment. He has pointed out certain documents and statements in support of his contention, as such, impugned summoning order as well as entire proceedings be quashed.
5. Per contra, learned AGA has submitted that from the perusal of the allegations made in the complaint and the material collected during the course of enquiry, prima facie offence is clearly made out against the applicants and as such, impugned summoning order as well as entire proceedings cannot be quashed.

6. From the 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 applicants. 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.

7. At this stage, only prima facie case is to be seen in the light of the law laid down by the 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 persons cannot be considered at this stage.

8. Moreover, the applicants had already been directed to be released on bail and they have 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 they are free to take all the submissions in the said discharge application before the trial court.

9. At this stage, this Court is not in a position to weigh the factual matrix of the case properly and accused persons have a right to file a discharge application before the trial court and the trial court may decide their discharge application, if there is no evidence against them.

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

11. However, it is directed that in case the applicants file an application for discharge before the court below, the same be considered and decided expeditiously considering each and every aspect of the matter in accordance with law after hearing the public prosecutor.

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

Order Date :- 20.11.2023/Subham