

Court No. - 89

Case :- APPLICATION U/S 482 No. - 36668 of 2023

Applicant :- Naim

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

Counsel for Applicant :- Siddarth Jaiswal

Counsel for Opposite Party :- G.A., Imran Ali

Hon'ble Deepak Verma, J.

1. Heard learned counsel for the applicant; learned counsel appearing for opposite party no. 2 learned A.G.A. for the State and perused the record.

2. The present 482 Cr.P.C. application has been filed to quash the charge sheet dated 29.04.2022; summoning order dated 10.05.2022 as well as entire proceedings of Case No. 442 of 2022 (State Vs. Naim) arising out of Case Crime No.56 of 2022, under Sections 354, 354 (D) I.P.C. and 7/8 POCSO Act, P.S. Kaimari, District Rampur, pending before the court of Additional Sessions Judge/Special Judge (POCSO Act), Rampur.

3. Counsel for the applicant submits that allegation alleged in the F.I.R. and evidence collected during investigation is not supported the prosecution case. Counsel for the applicant next submits that from perusal of F.I.R. as well as statement of victim recorded during investigation, it do not disclose offence in the alleged section and cognizance taken by the learned Magistrate is without application of judicial mind. He next submits that there is chances of settlement between the parties. It is averred that during recording of statement, witnesses have not stated anything against the applicant. The whole proceedings is malicious and liable to be set aside. Counsel for the applicant has placed reliance upon the judgement of Apex Court in Pepsi Foods Ltd. and Others Vs. Special Judicial Magistrate and Others wherein the court has held thus:

"27. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

Counsel for the applicant has placed reliance upon the other judgement of Apex Court in Parbatbhai Aahir @ Parbatbhai Bhimsinbhai Kumar and others Vs. State of Gujarat and Another wherein the court has held thus:

"10. [Section 482](#) is prefaced with an overriding provision. The statute saves the inherent power of the High Court, as a superior court, to make such orders as are necessary (i) to prevent an abuse of the process of any court; or (ii) otherwise to secure the ends of justice. In Gian Singh (supra) a bench of three learned Judges of this Court adverted to the body of precedent on the subject and laid down guiding principles which the High Court should consider in determining as to whether to quash an FIR or complaint in the exercise of the inherent jurisdiction. The considerations which must weigh with the High Court are"

4. Per contra counsel for the opposite party no. 2 and learned A.G.A. opposed the submission raised by counsel for the applicant and submitted that on perusal of statement of victim, prima facie case is made out against the applicant and applicant has not annexed any document collected during investigation.

5. Considered the submissions made by counsel for the parties and perused the entire record. It is evident that petition is not supported by any evidence collected during investigation. Applicant has not annexed any document collected during investigation which are part of the charge sheet. Argument raised by the counsel for the applicant is not supported by any documentary evidence. From perusal of F.I.R., offence against the applicant, prima facie is made out and other submission raised by counsel for the applicant is out of the record which cannot be considered. Moreover, the trial is going on and the trial court shall examine the testimony of the witnesses and 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.

6. The judgment cited by the counsel for the applicant is not applicable as the dispute in the judgment of Apex Court is entirely different from the present case. 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.

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

Order Date :- 2.12.2023

Meenu Singh