

Court No. - 89

Case :- APPLICATION U/S 482 No. - 36571 of 2023

Applicant :- Niyaz And 4 Others

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

Counsel for Applicant :- Mohammad Yaseen, Mohd. Samiuzzaman Khan, Rakesh Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma, J.

1. Heard learned counsel for the applicants, learned AGA for the State and perused the record.
2. This application under Section 482 Cr.P.C. has been filed by the applicants to quash the charge sheet No.34 of 2023 dated 11.07.2023, cognizance/summoning order dated 16.08.2023 passed by Metropolitan Magistrate, Court No.6, Kanpur Nagar as well as entire proceedings of Case No.121766 of 2023 arising out of Case Crime No.32 of 2023, under Sections- 498A, 323, 506 I.P.C. and Section 3/4 of DP Act, P.S.- Colonelganj, District- West Commissionerate Kanpur Nagar.
3. On perusal of record, it is apparent that on 11.10.2023, this Court referred the matter to Mediation Center and directed the applicants to deposit Rs.50,000/- in the Mediation Center, Allahabad, but a report is annexed with the record that applicants did not deposit the amount directed by this Court. Hence, the aforesaid mediation could not take place.
4. Learned counsel for the applicants argued the case on merits and vehemently submitted that the order passed by the Magistrate taking cognizance does not reflect any application of mind to the facts of the case and the material on record and cognizance has been taken in a mechanical manner.
5. He next submitted that before the Magistrate takes cognizance, it is imperative that he must take notice of the accusations and apply his mind to the allegations made in the complaint or in the police report or information received from the source other than a police report as the case may be and the material filed therewith and it is only after he satisfied that the allegations, if proved would constitute an offence, he should take cognizance. In this case the

Magistrate has taken cognizance without taking into considerations the aforementioned parameters.

6. In support of his contention learned counsel for the applicants has placed reliance upon the case of **Fakhruddin Ahmad Vs. State of Uttaranchal and another, 2009 (64) ACC 774.**

7. *Per contra*, learned A.G.A. made his submissions in support of the impugned order.

8. I have carefully examined the submissions advanced by the learned counsel for the parties and perused the impugned order as well as the other materials brought on record, I find that the facts of the case lie in an every very narrow compass. After investigation the Investigating Officer submitted report on the basis of which the Judicial Magistrate, took cognizance of offences.

9. From perusal of the impugned order it appears that before taking cognizance the learned Magistrate has neither taken into consideration the nature of accusations nor he has made any effort to satisfy himself as from the materials collected during investigation and keeping in view the nature of the allegations made against the applicants any offence under Sections 498A, 323, 504, 506 I.P.C. and Section 3/4 of DP Act was disclosed or not. By the impugned order he has taken cognizance in a very cursory and routine manner. While dealing with the identical issue the Apex Court in the case of **Fakhruddin Ahmad (supra)** has held hereunder:

15. Nevertheless, it is well settled that before a Magistrate can be said to have taken cognizance of an offence, it is imperative that he must have taken notice of the accusations and applied his mind to the allegations made in the complaint or in the police report or the information received from a source other than a police report, as the case may be, and the material filed therewith. It needs little emphasis that it is only when the Magistrate applies his mind and is satisfied that the allegations, if proved, would constitute an offence and decides to initiate proceedings against the alleged offender, that it can be positively stated that he has taken cognizance of the offence. Cognizance is in regard to the offence and not the offender.

10. Thus, in view of the above and the fact that the impugned order by which cognizance has been taken does not reflect any application of mind the same cannot be sustained. This application is **allowed**. The order dated 16.08.2023 passed Metropolitan Magistrate, Court No.6, Kanpur Nagar in Case No.121766 of 2023 arising out of Case Crime No.32 of 2023, under Sections- 498A,

323, 506 I.P.C. and Section 3/4 of DP Act, P.S.- Colonelganj, District- West Commissionerate Kanpur Nagar, is **set aside** with the direction that the Magistrate shall pass a fresh order in the matter in accordance with law within a period of **one month** from the date of production of a certified copy of this order.

11. Learned counsel for the applicants undertakes to file a certified copy of this order before the Magistrate concerned within a month from today. In case he fails to do so, this application shall stand dismissed automatically.

Order Date :- 1.12.2023

Saif