

Court No. - 89

Case :- APPLICATION U/S 482 No. - 36730 of 2023

Applicant :- Muzaffar

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

Counsel for Applicant :- Diwan Saifullah Khan, Dharmendra Pratap Singh, Krishna Deep Singh, Mohd Harish

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma, J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.

2. The present 482 Cr.P.C. application has been filed to quash the charge sheet dated 05.07.2022 submitted in Case Crime No. 149 of 2022, under Sections 193, 199 I.P.C. & Section 125-A, Representation of People Act, 1951, Police Station Nawabganj, District-Prayagraj as well as cognizance order dated 19.06.2023.

3. Learned counsel for the applicant submits that the F.I.R. has been lodged under Section 193, 199 I.P.C. & Section 125A Representation of People Act, 1951. Thereafter charge sheet has been submitted under the aforesaid sections. Learned counsel for the applicants has further submitted that charged section is non-cognizable section and the learned Magistrate may pass an order taking cognizance, if he so desires, by proceeding under Chapter XV of the Code of Criminal Procedure. Reliance has been placed to Explanation 2(d) of the Code of Criminal Procedure, which reads as follows:-

"Explanation-- A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint, and the police officer by whom such report is made shall be deemed to be the complainant."

5. Learned A.G.A. has stated that no useful purpose would be served in issuing notice to the opposite party no.2 as it will only delay the proceedings of the present case.

6. Therefore, on the basis of aforesaid Explanation, which has been interpreted by Co-ordinate Bench of this Court in Application u/s

482 No. 45609 of 2018 (Santosh Kumar and 2 others vs. State of U.P. and others) decided on 31.1.2019, wherein it has been held that when the charge-sheet is only of non-cognizable offence, in view of the aforesaid provision, the charge sheet should be treated as a complaint.

7. The argument of learned counsel for the applicant is well founded and the order taking cognizance is set aside. Now, the Magistrate may pass an order taking cognizance, if he so chooses, by proceeding in this matter as a complaint case under Chapter XV of the Code of Criminal Procedure. He can also keep in mind Proviso(a) to Section 200 Cr.P.C., which reads as follows:-

"Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses."

(a) If a public servant acting or purporting to act in discharge of his official duties or a Court has made the complaint;"

7. With these observations, this application under Section 482 Cr.P.C. is finally disposed of.

Order Date :- 7.11.2023

Sunil Kr. Gupta