

Neutral Citation No. - 2023:AHC:196736

RESERVED

Court No. - 5

Case :- APPLICATION U/S 482 No. - 36628 of 2023

Applicant :- Shivshankar

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

Counsel for Applicant :- Dinesh Kumar Maurya, Virendra Singh Parmar

Counsel for Opposite Party :- G.A.

HON'BLE PIYUSH AGRAWAL, J.

1. Heard Shri Virendra Singh Parmar, learned counsel for the applicant and the learned AGA for the State - opposite party.
2. This application under Section 482 Cr.P.C. has been filed for quashing the charge sheet dated 30.09.2018 as well as the cognizance order dated 04.04.2019 passed by the Additional Chief Judicial Magistrate, 3rd, Jaunpur in Case No. 803/2019 arising out of Case Crime No. 70/2018, under sections 504 & 506 IPC, Police Station – Sigra mau, District – Jaunpur.
3. The facts of the case in brief are that on 20.08.2018, the opposite party no. 2 lodged a First Information Report against the applicant alleging that a video was sent in the mobile number of the opposite party on 25.08.2018, in which the applicant was shown to be abusing and threatening to kill the opposite party no. 2. Thereafter, investigation was carried out and the statement of the opposite party no. 2 was recorded.
4. Learned counsel for the applicant submits that without conducting proper and fair investigation, the charge sheet has been submitted against the applicant on 30.09.2018, in which the trial court summoned the applicant vide order dated 04.04.2019. He further submitted that the incident occurred on 25.08.2018, but the First Information Report was lodged on 26.08.2018 in spite of the fact

that the distance of the Police Station is only 1.5 kms. He further submits that no *prima facie* offence under sections 504 & 506 IPC is made out against the applicant and the impugned cognizance has been taken without considering the provisions of section 2(d) of the Cr.P.C. and therefore, the entire proceedings are nothing, but an abuse of the process of law. In support of his submissions, he has placed reliance on the judgement of this Court in **Satvir Singh Vs. State of U.P. & Another** [2022(1) JIC 769 (All)].

5. Per contra, learned AGA has supported the impugned order and submitted that no order sheet has been brought on record by the applicant along with the instant application. He further submits that there is no illegality in the order passed by the Magistrate concerned taking cognizance in the matter as the same has been passed after careful consideration of the materials available on record. He further submits that since the applicant had been charged under sections 504/506 IPC, he has to be tried for both the offences in the manner prescribed for trial of cognizable offences as the offence under section 506 IPC is a cognizable offence. In support of his submissions, he has placed reliance on the judgement of the this Court in **Rakesh Kumar Shukla Vs. State of U.P.** [2021 Supreme (All.) 1013].
6. Heard learned counsel for the parties and perused the record.
7. There is no doubt that section 506 IPC is a cognizable offence in the State of U.P. The contention of the learned counsel for the applicant that the applicant was charged with commission of non-cognizable offence is misconceived, as in the present case the accused has been charged with sections 504 & 506 IPC, in which section 506 IPC is a cognizable offence. It is evident from the perusal of section 155(4) Cr.P.C. that where a case relates to two or more offences, of which at least one is cognizable, the case shall be deemed to be a cognizable case.

8. Therefore, since the applicant – accused had been charged under sections 504 & 506 IPC, he has to be tried for both the offences in the manner prescribed for trial for cognizable offences.
9. Considering facts & circumstances of the case as well as the law laid down by this Court in ***Rakesh Kumar Shukla*** (supra), no interference is called for in this application moved under Section 482 Cr.P.C.
10. The present application under Section 482 Cr.P.C. lacks merit and is, accordingly, dismissed.

Order Date :-12/10/2023

Amit Mishra