

Court No. - 91

Case :- APPLICATION U/S 482 No. - 37854 of 2023

Applicant :- Dr. Harendra Prasad Singh And 3 Others

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

Counsel for Applicant :- Sanjay Vikram Singh, Adarsh Singh, Rajneesh Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar, J.

1. Heard learned counsel for the applicants and learned A.G.A. for the State. Learned counsel for the applicants is permitted to make necessary corrections in the prayer clause of the application.

2. By means of instant application under Section 482 Cr.P.C, the applicants seeks to quash the order dated 31.08.2023 passed by Additional Sessions Judge/ Fast Track Court I, Jaunpur and order dated 23.9.2022 in Session Trial No.192 of 2022 (State vs. Harendra Pratap Singh) arising out of Case Crime No. 0821 of 2016, under section 323, 504, 506, 308 I.P.C., Police Station Jalalpur, District Jaunpur and further prayer to pass fresh order in the aforesaid case has been made.

3. It is submitted by learned counsel for the applicants that in this case charge was framed vide order dated 23.9.2022. The main submission of the learned counsel for the applicants is that there is no material available on record specifically nature of injury is not fatal still the charge has been framed under section 308 IPC. The application to the effect of altering the charge was moved by the applicants before the trial court which was dismissed vide order dated 31.8.2023 mainly on the ground that no additional evidence has been recorded and the application has been moved just after the framing of charge. From the perusal of the order dated 23.9.2022, it is apparent that charge was framed without adding of

section 34 IPC against the accused persons Dr. Harendra Prasad Singh, Amod Singh @ Rinku, Neeraj Singh @ Abhishek Kumar Singh and Ajay Pratap Singh @ Ajay Kumar Singh though they have committed offence in furtherance of common intention but charge has been framed simplicitor under section 308 IPC without adding under section 34 IPC and hence, the initiation of the proceedings against the applicants is nothing but abuse of process of court.

4. Per contra, learned A.G.A. has opposed the prayer but could not dispute the aforesaid facts.

5. In view of the submissions made by learned counsel for the rival parties, it is apparent that the charge has been framed against the accused persons under section 308, 323 IPC simplicitor though order is to the effect that the accused persons have committed offences in furtherance of common intention but charge under section 308 IPC has been only framed as a simplicitor and section 34 IPC has not been added thereto which shows that the order has been passed in a mechanical way without application of judicial mind.

6. Thus, the orders impugned dated 23.09.20223 and 31.08.2023 are hereby set-aside. The matter is remanded back to the trial court concerned to decide the matter afresh in accordance with law, within a period of two months from the date of production of certified copy of this order.

7. With the aforesaid observations, the application stands **disposed of**.

Order Date :- 20.11.2023
Shiv