

Court No. - 92

Case :- APPLICATION U/S 482 No. - 37720 of 2023

Applicant :- Bajrang Yadav And 3 Others

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

Counsel for Applicant :- Abhishek Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Abhishek Kumar Yadav, learned counsel for the applicants and Sri Sandeep Choudhary, learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the order dated 20.07.2023 issuing non-bailable warrants were issued, charge-sheet dated 06.06.2018 as well as impugned summoning/cognizance order dated 02.08.2018 and the entire proceedings in Case No. 1116 of 2018 (State of U.P. vs. Bajrang Yadav and Others), arising out of Case Crime No. 435 of 2017 u/S 323, 504 and 506 I.P.C., P.S.- Tharwai, District- Prayagraj (Allahabad), pending in the court of learned Judicial Magistrate, Court No.1, Prayagraj (Allahabad).

3. Learned counsel for the applicants submits that in the instant case initially an N.C.R. was lodged against the applicants for an offence u/S 323, 504 I.P.C., on 02.06.2016, thereafter the medical examination of the injured persons was conducted on 03.06.2016, wherein simple injury was found on the head of the victim. Learned counsel for the applicants further submits that subsequently, an Application u/S 155(2) Cr.P.C., was moved by the opposite party no.2, upon which learned Magistrate directed investigation by the police and after due investigation and on the production of the injury report dated 08.09.2017, on the basis, which was prepared by the Primary Health Centre, Bahana, Prayagraj (Allahabad), on the basis of the C.T. Scan at T.B. Sapru Hospital, Prayagraj, given by the Dr. K.K. Singh and Dr. Pathak, and it was found fractured in the parietal bone near vertex, which was an injury of grievous nature, on this basis, offence u/S 308 I.P.C., was added and the F.I.R. was registered on 31.10.2017 against the applicants and after due investigation of the matter and after recording the statements and collecting the material, the charge-sheet was filed against the applicants herein for the offences u/S 323, 504 and 308 I.P.C. Learned counsel for the applicants submits the said cognizance order

dated 02.08.2018, has been passed by the learned Magistrate in the printed format, without application of mind. Learned counsel for the applicants further submits that while taking the cognizance, the learned Magistrate has altered the offences as levelled in the charge-sheet against the applicants without any application of mind, which is not permissible in law.

4. Per contra, learned A.G.A for State submits that summoning order has been passed on the basis of the material available before the learned Magistrate, after due application of mind, which is reflected that the learned Magistrate has not framed the charge u/S 308 I.P.C., against the applicants after considering of the material available before the learned Magistrate. Learned A.G.A for the State further submits that some cognizance/summoning order was passed in the year, 2018. Since then, the applicants herein is absconding from trial and from the records it is apparent that on 18.10.2022, the summons were served upon the opposite party no.2. Despite that he did not appear before the Court. Thereafter, on 17.01.2023, the bailable warrants were issued against the applicants and even after a bailable warrants issued he did not appear then, on 20.07.2023, the non-bailable warrants has been issued against the applicants. Therefore, is no illegality in the order dated 20.07.2023, issuing non-bailable warrants against the applicants.

5. Having heard the submissions made by learned counsels for the parties, this Court has carefully gone through the record of the case and from the record it is apparent that on the date of incident itself, the N.C.R., was registered against the applicants. Subsequently, the medical examination was conducted and the victims have got the treatment and subsequently, on the basis of the injury report prepared on the basis of the C.T. Scan and report of the Radiologist, when it was found that the victim, Dharmendra Kumar, has sustained grievous injury on his head and fracture on the parital bone then the offence u/S 308 I.P.C., was added against the applicants. From the perusal of the summoning order dated 02.08.2018, *prima facie* it appears that it has been passed on the printed format, the practice which has been deprecated by this Court in various judgements. However, from the careful perusal of the same it appears that it is not without any application of mind and the application of mind of the Magistrate is reflected when he has taken cognizance only for the offence u/S 323, 504 and 506 I.P.C. and not for the offence u/S 308 I.P.C., against the applicants herein. Therefore, there is a due application of mind in the instant case. Further, since, some cognizance/summoning order was passed in the year, 2018 and five years have passed and the applicant is absconding, therefore, this Court do not find any good ground

to interfere with the cognizance/summoning order against the applicants herein.

6. Therefore, the instant application is devoid of merits and is hereby ***dismissed***.

Order Date :- 2.12.2023

Shubham Arya