

Court No. - 86

Case :- APPLICATION U/S 482 No. - 36771 of 2023

Applicant :- Jasveer

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

Counsel for Applicant :- Ashutosh Singh, Neetu

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta, J.

1. Heard learned counsel for the applicant, learned AGA for the State and perused the record.

2. This application under Section 482 Cr.P.C. has been filed with the prayer to quash the summoning order dated 14.02.2023 as well as entire proceedings of Complaint Case No. 02 of 2023 (Ruksana Vs. Jasveer and Others), under Sections 376-D IPC and Section 5/6 of POCSO Act, Police Station Vrindavan, District Mathura, pending in the court of Additional Sessions Judge/ Special Judge (POCSO Act), Mathura.

3. As per the allegations made in the complaint as well as statement of the witnesses recorded under Sections 200 and 202 CrPC, it is alleged that victim is a minor girl aged about 11 years and on 03.01.2023 at about 7:00 PM, the applicant along with three other co-accused persons reached at the place of the incident in a flat and on the pretext of bringing milk and some other edibles, sent out her mother.

4. It is further alleged that when she returned back at about 7:30 PM, then she saw the applicant Jasveer committing penetrative sexual assault on her minor daughter and other co-accused Anjali and Harish Kumar were recording obscene videos of her daughter. On making effort to raise alarm, she was threatened that in case, she raises alarm, they would make such obscene videos viral and thereafter, left the place of incident extending death threats to her.

5. On the basis of the said allegations, a complaint has been lodged by the opposite party no.2 against the applicant including co-accused persons. Learned Magistrate, after recording the statement of the witnesses under Sections 200

and 202 CrPC and making requisite inquiry, has summoned the applicant to face trial under Section 376-D IPC and Sections 5/6 of POCSO Act vide order dated 14.02.2023.

6. Being aggrieved and dissatisfied by the said order, the applicant has filed the instant application under Section 482 CrPC before this Court.

7. Learned counsel for the applicant has submitted that the applicant is wholly innocent and has been falsely implicated in the present case due to ulterior motive.

8. Learned counsel for the applicant has next submitted that applicant is the resident of district Bulandshaher and fake complaint has been filed against him by the opposite party no.2.

9. Learned counsel for the applicant has next submitted that from the allegations made in the complaint and the material collected during the course of inquiry, no offence is disclosed against the applicant and therefore, the entire proceedings is liable to be quashed.

10. Learned counsel for the applicant has pointed out certain documents and statements in support of his contention and has further submitted that present complaint case has been instituted against the applicant with a malafide intention only for the purpose of harassment and as such, impugned summoning order as well as entire proceedings is liable to be quashed.

11. Per contra, learned AGA has submitted that from the perusal of the allegations made in the complaint and the material collected during the course of inquiry, prima facie offence is clearly made out against the applicant and as such, impugned summoning order and the entire proceedings cannot be quashed.

12. From the perusal of the material on record and looking into the facts of the case, at this stage it cannot be said that no offence is made out against the applicant. All the submissions made at the bar relate to the disputed questions of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C.

13. Moreover at this stage, disputed question of fact cannot

be considered, therefore, in view of the law laid down by the Hon'ble Apex Court in the cases of ***R.P. Kapur Vs. State of Punjab, AIR 1960 SC 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cri.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cri.) 192 and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.) 283***, the prayer for quashing the impugned summoning order and entire proceedings is refused.

14. This application under Section 482 CrPC is accordingly **dismissed.**

Order Date :- 31.10.2023

Nadim