

Court No. - 87

Case :- APPLICATION U/S 482 No. - 36691 of 2023

Applicant :- Aaqil Ahmad

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

Counsel for Applicant :- Sushil Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Neeraj Tiwari,J.

1. Heard learned counsel for the applicant and Sri Yogesh Kumar Singh, learned A.G.A. for the State.
2. Present application under Section 482 Cr.P.C. has been filed seeking quashing of impugned order of framing charge dated 31.05.2023 in Session Trial No. 38 of 2023(State Vs. Aquil Ahmad), arising out of case crime no. 197 of 2022, under Section-323, 506, 304 I.P.C., Police Station-Utaraon, District-Prayagraj.
3. Learned counsel for the applicant submitted that earlier, an application was filed by independent witness on 04.08.2022 before S.H.O. Utaraon, Prayagraj informing death of his maternal uncle namely, Azad Husain and the very same person has given statement under Section 161 Cr.P.C. with allegation of assaulting and beating Azad Husain (now deceased). He next submitted that like that another inquest witness has given statement that death was caused due to prolonged illness. He has also given contrary statement with the same allegation of assault and beating resulting into death of Azad Husain. He next submitted that trial Court while framing the charges has not considered the material contradiction of the witnesses, therefore, order of framing charge dated 31.05.2023 under Section 304/34, 323/34 and 506 I.P.C. is bad and liable to be set aside.
4. Sri Yogesh Kumar Singh, learned A.G.A. submitted that even if there is substance in the argument of the applicant, as per the post-mortem report, there is head injury and in light of judgment of Apex Court in ***State of Gujarat Vs. Dilipsinh Kishorsinh Rao: 2023 SCC Online SC 1294***, decided on 09.10.2023, at the time of framing charges, except the papers produced by the Police, no other defence documents may be seen. He next submitted that since in the present case, there is head injury, therefore, there is no illegality in the order of framing charge dated 31.05.2023.
5. I have considered the rival submission made by learned counsel for the parties and perused the record.

6. From the perusal of post-mortem report, it is apparently clear that deceased was having ante-mortem head injury, which resulted into his death.

7. I have also perused judgment of Apex Court in the matter of ***Dilipsinh Kishorsinh Rao(Supra)***. Relevant paragraphs of the said judgment are being quoted hereinbelow:

" 8. At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only.

11. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression "the record of the case" used in Section 227 Cr.P.C. is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra Vs. Som Nath Thapa (1996) 4 SCC 659 and the State of MP Vs. Mohan Lal Soni (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial."

8. Therefore, in light of the facts of this case as well as law laid down by the Apex Court in the matter of ***Dilipsinh Kishorsinh Rao(Supra)***, no interference is required in the order dated 31.05.2023

9. Application lacks merit and is accordingly **dismissed**.

10. No order as to costs.

Order Date :- 12.10.2023

ADY