

Court No. - 93

Case :- APPLICATION U/S 482 No. - 36854 of 2023

Applicant :- Prashant Bhatt

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

Counsel for Applicant :- Chandra Kumar Rai

Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal,J.

1. Heard Sri Chandra Kumar Rai, learned counsel for the applicant and Sri Sunil Kumar Kushwaha, learned A.G.A. for the State.

2. The present application has been filed with a prayer to quash the impugned Charge Sheet dated 24.08.2022 as well as cognizance and summoning order dated 09.09.2022 and entire proceedings of Case No.1543 of 2022 (State vs. Prashant Bhatt), arising out of Case Crime No.55 of 2022, under Sections 420, 406 I.P.C., P.S. Jahanaganj, District Azamgarh, pending before Additional Civil Judge (J.D.)/Judicial Magistrate, Court No.19, Azamgarh.

3. The sole argument of counsel for the applicant is that the impugned summoning order is absolutely cryptic and suffers from non-application of mind because bare perusal of summoning order, annexed at page No.57 of the application, it is clear that it was nothing but filling up a printed proforma which has been deprecated by this Court in several judgements. Paragraph-9 of the judgement of this Court dated 5.10.2023, passed in ***Application u/s 482 No. 35443 of 2023; Amit Kumar Dwivedi and another vs. State of U.P. and another***; reads as under:

"9. In view of above legal position, this Court is of the view that merely signing and filling up the date and case crime number in printed proforma is absolutely non-application of mind because the cognizance order must reflect the prima facie opinion of the learned Magistrate on the material collected during investigation. Order of issuance of process is not an empty formality, it may affect the personal liberty of a person. Article 21 of Constitution of India guarantees personal liberty of a person and same cannot be deprived of, without due procedure of law. Apart from this, summoning of accused to appear before criminal court after taking cognizance is a serious matter, affecting the dignity, self-respect and image in society. Therefore, proper process by the criminal court must be followed at the time of taking cognizance and summoning the accused."

4. The Hon'ble Apex Court in the judgement of ***Lalankumar Singh vs State of Maharashtra; 2022 SCC Online SC 1383*** has observed in para 38 that "the order of issuance of process is not an

empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused".

5. Similarly, the Apex Court in the case of Sunil Bharti Mittal vs Central Bureau of Investigation; 2010(11) SCC 125 observed in para 53 which is as under:-

"53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

6. Co-ordinate Bench of this Court in the judgement of **Satya Pal vs State of U.P. and another; 2023 (4) ADJ 345 (LB)**, held that signing on printed proforma has no cognizance at all as the same is without application of mind and quashed the cognizance order. The relevant paragraph no. 21 of the Judgement is quoted as under:

"21. In view of the above, the conduct of the judicial officers concerned in passing orders on printed proforma by filling up the blanks without application of judicial mind is objectionable and deserves to be deprecated. The summoning of an accused in a criminal case is a serious matter and the order must reflect that Magistrate had applied his mind to the facts as well as law applicable thereto, whereas the impugned summoning order was passed in mechanical manner without application of judicial mind."

7. As in the present case, the impugned cognizance order is nothing but signing the printed proforma which cannot be said to be application of mind, therefore, considering the aforesaid legal position, the impugned cognizance order passed by Additional Civil Judge (J.D.)/Judicial Magistrate, Court No.19, Azamgarh is **quashed**. Learned Judicial Magistrate is directed to pass fresh order, regarding cognizance on the charge sheet in question within a period of one month from the date of presentation of a copy of this order, in accordance with law.

8. With the aforesaid direction, the application stands **allowed**.

Order Date :- 7.11.2023/Atul