

Court No. - 4

Case :- APPLICATION U/S 482 No. - 38002 of 2023

Applicant :- Janardan Lal Srivastava And Another

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

Counsel for Applicant :- Rajeev Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Prakash Padia,J.

1. Heard learned counsel for the applicants and learned A.G.A for the State-respondents.

2. The applicants have preferred the present Application under Section 482 of Code of Criminal Procedure, 1973 to quash the charge-sheet dated 15.10.2022 as well as cognizance/ summoning order dated 19.08.2023 passed in Criminal S.T. No. 1126 of 2023 (State versus Sonu and others) arising out of Case Crime No. 310 of 2022 under Section 323, 504, 506, 308 I.P.C. and 3(1)r, 3(1)(s) of SC/ST Act at Police Station Kotwali, Padarauna, District Kushinagar pending in the court of Additional Session Judge/Special Judge S.C./S.T. (Prevention of Atrocities) Act, Kushinagar. With further prayer to stay the further proceeding of the aforesaid case.

3. Learned counsel for the applicants submits that no offence is made out against the applicants and the present prosecution has been instituted with a mala fide intention for the purpose of causing harassment.

4. In the absence of any of the grounds which might justify the quashing of complaint or the impugned proceedings, the prayer for quashing the same is refused as I do not see any abuse of the

courts process either. The summoning court has been vested with sufficient powers to discharge the accused even before the stage to frame the charges comes, if for reasons to be recorded it considers the charge to be groundless.

5. After some arguments, learned counsel for the applicants prays that the applicants be permitted to move appropriate application before the Court concerned as per provisions contained under the Cr.P.C.

6. This prayer has not been opposed by the learned A.G.A.

7. In view of the order proposed to be passed herein, no useful purpose would be served by putting the opposite party to notice and keeping this petition pending before this Court. However, in case the opposite party feels aggrieved by the order his/her right to seek modification/variation of the order is being kept reserved.

8. Considering the facts and circumstances of the case, the applicants are permitted to appear before the concerned court within three weeks from today and move an application as per provisions contained under the Cr.P.C. claiming discharge. The concerned court shall after hearing the counsel decide the application on merits, in accordance with law, within a period which shall not exceed a period of two months from today.

9. Till 31 December, 2023 or till the disposal of the aforesaid application, whichever is earlier, no coercive action will be taken against the applicants.

10. If the concerned court after hearing the counsel for the accused feels persuaded to have the view that the accused ought not to have been summoned and the charge is groundless it shall not abstain

from discharging the accused only on the ground that the material available at the time of summoning was the same which is available on record at the time of hearing the discharge application. On the other hand, if the lower court even after hearing the counsel for accused holds the view that the accused has been rightly summoned and the material brought on record does not indicate the charges to be groundless it shall make an order to that effect and proceed further in the matter, in accordance with law and shall also be free to adopt such measures to procure the attendance of the accused as the law permits.

11. With the above observations, this application stands disposed o

Order Date :- 31.10.2023

Swati