

Court No. - 91

Case :- APPLICATION U/S 482 No. - 37864 of 2023

Applicant :- Nekpal And 3 Others

Opposite Party :- State Of U.P. And Anotehr

Counsel for Applicant :- Vivek Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar,J.

1. Heard learned counsel for the applicants and learned AGA for the State.

2. The present application u/s 482 Cr.P.C. has been filed by the applicants with the prayer to quash the charge sheet dated 12.12.2022 and summoning/cognizance order dated 17.07.2023 as well as the entire proceedings of Case Crime No.0436 of 2022, under Sections 323, 324, 504 IPC, Police Station Rajpura, District Sambhal.

3. Learned counsel for the applicants submits that the applicants are innocent and have been falsely implicated in the present matter. It is further submitted that initially a NCR was filed by the opposite party no.2 on 29.07.2018 against the applicants and thereafter, after more than four years from the lodging the NCR, the opposite party no.2 moved an application u/s 155(2) Cr.P.C. before the court concerned on 13.09.2022, which is allowed by the court below vide order dated 27.09.2022. Further submission is that no proper explanation has been given by the opposite party no.2 regarding the filing of application u/s 155(2) Cr.P.C. with delay. Further submission is that after completing the investigation, the Investigating Officer has submitted charge sheet on 12.12.2022 for the aforesaid offence against the applicant

without considering the legal position of the case. Further submission is that in this case offence under Sections 323, 324, 504 IPC is involved, for the offence under Section 324 IPC punishment is prescribed three years and in this case incident took place on 29.07.2018. Further submission is that as per the Section 468(1)(c) Cr.P.C., if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years, the court cannot take cognizance of an offence. Section 468 Cr.P.C. is quoted as under:-

"1. Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in Sub-Section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years."

4. On the other hand, learned AGA has opposed the prayer but could not dispute the aforesaid facts and law.

5. Having regard to the facts and circumstances of the case, after perusing the entire record and having considered the submissions made by the learned counsel for the parties, I am of the view that the impugned summoning order is passed without application of mind. The cognizance in the case has been taken after five years as the incident took place on 29.07.2018 and cognizance was taken on 17.07.2023, which should have been according to the provisions of Section 468 Cr.P.C. within three years but the same has been taken after five years, which is barred under Section 468 Cr.P.C.. The institution and continuation of the criminal proceeding is nothing but sheer abuse of process of court and

otherwise to secure the ends of justice. Hence, the prayer made in the application is liable to be allowed.

6. Accordingly, the present application u/s 482 Cr.P.C. is **allowed**.

7. The entire proceedings of charge sheet dated 12.12.2022 and summoning/cognizance order dated 17.07.2023 as well as the entire proceedings of Case Crime No.0436 of 2022, under Sections 323, 324, 504 IPC, Police Station Rajpura, District Sambhal is hereby quashed against the applicants.

Order Date :- 19.10.2023

Sanjeet