

Court No. - 92

Case :- APPLICATION U/S 482 No. - 37663 of 2023

Applicant :- Riya Gupta @ Mansi And Another

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

Counsel for Applicant :- Abhishek Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Abhishek Gupta, learned counsel for the applicants and Sri Satish Kumar Shukla, learned A.G.A. for the State.
2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the charge-sheet dated 05.09.2020 as well as impugned cognizance order dated 02.01.2021 and the entire proceedings of the Case No. 57 of 2021 (State vs. Riya Gupta @ Mansi and Another), arising out of Case Crime No. 607 of 2020 u/S 67 of the Information Technology Act 2000, P.S.- Kotwali Dehat, District- Bulandshahar, pending in the court of learned Additional Civil Judge (Jr. Division), Court No. 6, Bulandshahar.
3. Learned counsel for the applicants submits that in the instant case, the allegations against the applicants were that the applicants used to send obscene messages to the opposite party no.2 on mobile. However, during investigation, nothing has come forward except the fact that the applicants used to talk to the opposite party no.2. No obscene messages or obscene material has been found to have been sent by the applicants herein to the opposite party no.2, attracting the offence u/S 67 of the Information Technology Act, 2000. The charge-sheet has been filed against the applicants in a mechanical manner and the learned Chief Judicial Magistrate has taken cognizance and summoned applicants herein in a mechanical manner, in a printed format without application of mind, as was required u/S 190 of the Cr.P.C. Learned counsel for the applicants has also been relied upon the judgements of this Court dated **15.10.2009 in *Application u/S 482 No. 19647 of 2009 (Ankit vs. State of U.P. and Another)***, whereby this Court has deprecated the practice of passing the cognizance/summoning orders on a printed format.
4. Since, the primary argument of the applicants is only with regard to the cognizance/summoning order, having been passed on a printed format without application of mind, this Court has

deprecated the practice of passing the order on a printed format in various cases. This application being decided without issuing notice to the opposite party no.2, at this stage.

5. Learned counsel for the State also admits that in the instant case the cognizance/summoning order has been passed on a printed format, which has been deprecated not only by this Court but also by the Apex Court in various decisions, which has been noted in the judgement of this Court in **Ankit (Supra)**.

6. Therefore, having heard the submission made by the parties and having regard to the judgement of **Ankit (Supra)** and the judgements of this Court in **Megh Nath Gupta & Another vs. State of U.P. and Another : 2008 (62) ACC 826** and the judgements passed by the Apex Court in **Deputy Chief Controller Import and Export vs. Roshan Lal Agrawal : 2003 (46) ACC 686 (SC)**, **U.P. Pollution Control Board vs. Mohan Meakins : AIR 2000 SC 1456** and **Kanti Bhadra vs. State of West Bengal : 2000 (40) ACC 441 (SC)**, the learned Magistrate cannot pass orders of taking cognizance in a mechanical manner, in a printed format, without application of mind. It is the duty of the learned Magistrate to apply his mind to the facts and material available before him and then he is required to record his satisfaction that the prima facie case is made out against the accused persons against whom the cognizance is to be taken and who are being summoned. Without such exercise, the cognizance/summoning order passed on a printed format, are not sustainable. Therefore, the impugned cognizance/summoning order dated 02.01.2021 is hereby **quashed** and the matter is remanded back to the learned Magistrate to pass the fresh order in accordance with law.

7. With the aforesaid directions, the instant application is **disposed of**.

Order Date :- 30.10.2023
Shubham Arya