

Court No. - 86

Case :- APPLICATION U/S 482 No. - 37674 of 2023

Applicant :- Jahangir @ Sedi And 2 Others

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

Counsel for Applicant :- Prem Shankar Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta,J.

1. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the materials available on record.
2. This application under Section 482 Cr.P.C. has been filed by the applicants with the prayer to quash charge-sheet dated 29.07.2020 in NCR No. 125 of 2019, under Sections 323 and 504 IPC, Police Station Sakaldeeha, District Chandauli as well as impugned cognizance/summoning order dated 09.12.2021 passed by Judicial Magistrate, Chandauli in Criminal Case No. 28081 of 2021 (State Vs. Jahangir @ Sedi and others), pending in the court of Judicial Magistrate, Chandauli, District Chandauli.
3. It is contended by learned counsel for the applicants that charged sections are non-cognizable sections and the learned Magistrate may pass an order taking cognizance, if he so desires, by proceeding under Chapter XV of the Code of Criminal Procedure. Reliance has been placed to explanation 2(d) of the Code of Criminal Procedure, which reads as follows:-

"Explanation-- A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint, and the police officer by whom such report is made shall be deemed to be the complainant."
4. Learned counsel for the applicantd has relied upon a Judgement of Hon'ble Apex Court reported in **2008 (16) SCC 763 M/s Eicher Tractor Ltd. and others Vs. Harihar Singh and another** as well as another Judgement of this Court reported in **2008 (1) JIC 220 (All) Awadesh Kumar and others Vs. State of U.P.** in support of his contention.

5. Learned A.G.A. has stated that no useful purpose would be served in issuing notice to the opposite party no.2 as it will only delay the proceedings of the present case.

6. Therefore, on the basis of aforesaid Explanation which has been interpreted in a Single Judge decision of this Court passed in ***Application u/s 482 No.45609 of 2018 (Santosh Kumar and 2 others vs. State of U.P. and others)***, decided on 31.1.2019, where it has been held that when the charge-sheet is only of non-cognizable offence, in view of the aforesaid provision, the charge-sheet should be treated as a complaint.

7. The argument is well founded and the order taking cognizance is set aside. Now the Magistrate may pass an order taking cognizance, if he so chooses, by proceeding in this matter as a complaint case under Chapter XV of the Code of Criminal Procedure. He can also keep in mind Proviso (a) to Section 200 Cr.P.C., which reads as follows:-

"Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses."

(a) If a public servant acting or purporting to act in discharge of his official duties or a Court has made the complaint;"

8. With these observations, this application under Section 482 CrPC is partly allowed.

Order Date :- 30.10.2023

Subham