

Court No. - 89

Case :- APPLICATION U/S 482 No. - 37885 of 2023

Applicant :- Ajay Kumar Sharma

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

Counsel for Applicant :- Shyam Lal, Abhilasha Singh, Ashutosh Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma, J.

1. Heard learned counsel for the applicant and learned A.G.A. on behalf of State.
2. The present 482 Cr.P.C. application has been filed to quash the charge sheet dated 15.12.2018; cognizance/summoning order dated 16.07.2020 as well as entire proceedings of Case No.2377 of 2020 (State of U.P. Vs. Ajay Kumar Sharma) arising out of Case Crime No.383 of 2018, under Sections 420 I.P.C. and 18/27 of Drugs and Cosmetics Act, 1940, P.S. Mundali, District Meerut.
3. Counsel for the applicant submits that instant F.I.R. lodged under the aforesaid section is not maintainable and the cognizance taken by the learned Magistrate is illegal and without application of judicial mind. It has been next submitted that for the same allegation, a complaint has been filed against the applicant by the Drug Inspector before the Additional District and Sessions Judge, Meerut. The proceedings challenged herein under the Drugs and Cosmetics Act is barred and no police case can be registered under the Act. The learned Magistrate has not considered this legal position and has taken cognizance under the Act.
4. Counsel for the applicant has placed reliance upon the judgment passed by the Division Bench of this Court in **Jaya Jain Vs. State of U.P. and Others** reported in 2023(5) ADJ 417. In para-22 of the said judgment, the Court held that the F.I.R. should not have been registered by the Police as the offences under the Indian Penal Code are non cognizable offences while offences alleged under the provisions of the Drugs and Cosmetics Act, can be prosecuted only by means of a complaint and not an FIR as is clear from the perusal of the judgment cited by learned counsel for the petitioners as also Section 32 of the Act.

5. Learned A.G.A. vehemently opposed the submission raised by counsel for the applicant and submits that the proceedings of the case cannot be quashed.

6. Considering the facts and circumstances of the case, as noted herein above, the submissions made by learned counsel for the parties and considering the above judgement passed by the division Bench, this Court, the order passed by the learned Judicial Magistrate Ist dated 16.07.2020 taking cognizance under Section 420 I.P.C. and 18/27 of Drugs and Cosmetics Act, is set aside. The application is **disposed of** with direction that the learned Magistrate shall pass order in view of the observation made by the Division Bench of this Court, preferably, within a period of one month from the date of production of a certified copy of this order.

Order Date :- 12.10.2023

Meenu Singh