

Court No. - 4

Case :- APPLICATION U/S 482 No. - 38038 of 2023

Applicant :- Gulab Chand Yadav And 6 Others

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

Counsel for Applicant :- Gauri Shankar Yadav, Shiv Kumar Kesari

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.
2. This application u/s 482 Cr.P.C. has been filed with prayer to quash the impugned charge sheet dated 14.09.2019 as well as cognizance/summoning order dated 22.07.2020 passed by Additional Chief Judicial Magistrate Second Jaunpur, in Criminal Case No.983 of 2020 (New Number 1145 of 2022) (State Vs. Gulab Chand Yadav and Others) arising out of Case Crime No.371 of 2019 under Section 147, 504, 506, 427 I.P.C. Police Station Mungra Badshahpur District- Jaunpur with an alternative prayer to stay the aforesaid case.
2. Learned counsel for the applicant contended that against the opposite party No.2, the applicants filed complaint for illegal constructions over the public land before the Sub Divisonal Magistrate, Machhalishahar District Jaunpur. Aggrieved with the aforesaid, the opposite party No.2 lodged the present F.I.R. making false and frivolous allegations against the applicants only in order to harass them. It is argued that the charge-sheet has been submitted in the matter and cognizance has already been taken by the Additional Chief Judicial Magistrate, Jaunpur on 22.07.2023. It is argued that thereafter various dates were fixed and only summons were issued. It is argued that when a Police Constable reached the house of applicants, thereafter they knew regarding the aforesaid case. It is argued that from perusal of the entire charge-sheet, no offence is made out against them. Present prosecution has been instituted with a malafide intention for the purpose of harassment. It is also submitted that cognizance of the offence has been taken on printed proforma without applying judicial mind. It has also been submitted that cognizance of the

offence has been taken on printed proforma without applying judicial mind. Relying upon the decision of this Court in **Ankit Vs. State of U.P. and another J.I.C. 2010 (1) 432**, submission of learned counsel for the applicant is that the order of cognizance being on a printed proforma is clearly without application of judicial mind and hence is liable to be quashed on this ground alone.

4. Learned A.G.A. has opposed the prayer and submitted that at this stage it cannot be said that no offence is made out against the applicants and charge sheet has not been submitted on the basis of credible evidence. He further submitted that the cognizance order has been based on printed proforma and, therefore, keeping in view the decision in the case of Ankit (supra) the Magistrate concerned may be directed to pass a fresh order.

5. All the submission relates to the disputed question of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C. At this stage only prima facie case is to be seen in the light of the law laid down by Supreme Court in cases of **R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426**. The disputed defence of the accused cannot be considered at this stage.

6. As regards the order of cognizance dated 22.07.2020 a certified copy of that order is annexed as Annexure No.10 to the affidavit. From perusal of the above order, it is evident that it is in a typed proforma where "crime number, section of the offence, name of the accused and next date fixed" are filled in printed proforma which leads to the conclusion that the Magistrate had passed the order in mechanical manner without application of judicial mind. In series of decision of the Apex Court, and of this Court it has been disapproved to pass the cognizance order in printed proforma.

7. This type of order has already been held unsustainable by this Court in the case of Ankit (supra) relying on in a number of decisions of the Apex Court. The relevant portion of the said judgement, is extracted below:

"Although as held by this Court in the case of Megh Nath Guptas & Anr V State of U.P. And Anr, 2008 (62) ACC 826, in which reference has been made to the cases of Deputy Chief Controller Import and Export Vs Roshan Lal

Agarwal, 2003 (4^) ACC 686 (SC), UP Pollution Control Board Vs Mohan Meakins, 2000 (2) JIC 159 (SC): AIR 2000 SC 1456 and Kanti Bhadra Vs State of West Bengal, 2000 (1) JIC 751 (SC): 2000 (40) ACC 441 (SC), the Magistrate is not required to pass detailed reasoned order at the time of taking cognizance on the charge sheet, but it does not mean that order of taking cognizance can be passed by filling up the blanks on printed proforma. At the time of passing any judicial order including the order taking cognizance on the charge sheet, the Court is required to apply judicial mind and even the order of taking cognizance cannot be passed in mechanical manner. Therefore, the impugned order is liable to be quashed and the matter has to be sent back to the Court below for passing fresh order on the charge sheet after applying judicial mind."

8. In view of the above, the order of cognizance i.e. summoning order dated 22.07.2020 passed by the Additional Chief Judicial Magistrate Second Jaunpur is hereby quashed and application u/s 482 Cr.P.C. is accordingly partly allowed.

9. The Additional Chief Judicial Magistrate Second Jaunpur is directed to pass fresh cognizance order after applying the judicial mind.

10. With the above observations, the application u/s 482 Cr.P.C. is finally disposed of.

Order Date :- 31.10.2023

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