

Delivered on 31.10.2023

Reserved on 7.11.2023

Neutral Citation No. - 2023:AHC:213162

Court No. - 86

Case :- APPLICATION U/S 482 No. - 37833 of 2023

Applicant :- Mohan Tiwari

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

Counsel for Applicant :- Sanjay Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta,J.

1. Heard learned counsel for the applicant, learned AGA for the State and perused the record.

2. The present application under Section 482 Cr.P.C. has been filed for quashing the charge sheet dated 7.3.2022 and cognizance and summoning order dated 20.9.2022 as well as entire proceedings of Criminal Case No. 11034 of 2022 (State Vs. Mohan Tiwari) arising out of Case Crime No. 0258 of 2021, under Section 304A IPC, P.S. Salempur, District- Deoria, pending in the Court of Addl. Chief Judicial Magistrate, Court No. 19, Deoria.

3. As per the allegations made in the first information report, it is alleged that on 16.10.2021 at about 2:45 a.m., the victim Vijai Singh was bitten by a snake. It is further alleged that the victim was rushed to Community Health Centre, Salempur, Deoria and admitted there for treatment. The applicant, who is a Pharmacist, was asked to call the doctor on duty for providing treatment to the victim, however the applicant instead of calling the doctor, himself administered two injections to the patient and assured that he will soon improve, however physical condition of the patient started

deteriorating and as such, the applicant referred the patient to District Hospital, Deoria and while reaching the said hospital, he breathed his last and the doctor declared him dead.

4. On the basis of said allegations, the first information report was lodged against the applicant vide Case Crime No. 258 of 2021, under Section 304A IPC, P.S. Salempur, District- Deoria. On the basis of FIR, the police conducted the investigation and after recording the statements of the relevant witnesses and collecting the relevant material, submitted charge sheet against the applicant under Section 304A IPC. On the basis of said charge sheet, learned Magistrate has taken cognizance and summoned the applicant to face trial vide order dated 20.9.2022.

5. Being aggrieved and dissatisfied by the said order, the present application u/s 482 Cr.P.C. has been filed.

6. Learned counsel for the applicant has submitted that applicant is wholly innocent and has been falsely implicated in the present case due to ulterior motive. He has next submitted that though the incident has taken place on 16.10.2021 but the first information report was lodged with a delay of two months. He has further submitted that infact on the oral direction of the doctor concerned, he has administered injections to the patient, however his condition did not improve and he ultimately died, for which the applicant cannot be blamed.

7. Learned counsel for the applicant has further submitted that from the perusal of the allegations made in the FIR and the material collected during the course of investigation, no offence is disclosed against the applicant and the present prosecution has been instituted with a malafide intention for the purpose of

harassment. He has pointed out certain documents and statements in support of his contention and has submitted that in view of thereof, impugned charge sheet, cognizance order as well as entire proceedings be quashed.

8. In order to buttress his argument, learned counsel for the applicant has relied upon the case of **Nanjundappa and another Vs. The State of Karnatka reported in 2022 LiveLaw (SC) 489 and 2022 SCC Online SC 628.**

9. Per contra, learned AGA has submitted that from the perusal of the allegations made in the FIR and the material collected during the course of investigation, prima facie offence is clearly disclosed against the applicant and as such, the impugned charge sheet, cognizance order as well as entire proceedings cannot be quashed.

10. Learned AGA has further drawn the attention of the Court to the statement of the attending doctor, who in his statement nowhere stated that he had instructed the applicant, who is a pharmacist, to administer injections to the patient as claimed by the applicant, rather he has stated that the applicant, who is a pharmacist, has never informed him of arriving of any patient at the Community Health Centre and he on his own had provided medical treatment to the patient and when his condition deteriorated, then referred him to District Hospital, Deoria for treatment.

11. Learned AGA has further submitted that being a pharmacist, it was beyond competence of applicant to administer injections to the patient. Even in the enquiry made by the competent authority, he has been found guilty of treating the patient without informing medical practitioner, as such offence stands clearly disclosed

against the applicant and the entire proceedings cannot be quashed against him.

12. Having considered the rival submissions made by the counsel for the parties and taking into consideration the allegations made in the FIR and the statement of the witnesses recorded under Section 161 Cr.P.C. and looking to the conduct of the applicant, who is a pharmacist and who without seeking medical advice from the medical practitioner posted there, on his own, had administered injections to the patient, consequent to which, physical condition of the patient deteriorated and he died, while being taken to the hospital for further treatment, which prima facie not only constitute an offence of causing death by negligence but is something more serious and grave in nature.

13. Thus, from the perusal of the material on record and looking to the facts of the case at this stage, it cannot be said that no offence is made out against the applicant. The case law cited by the counsel for the applicant is clearly distinguishable on facts and based on an appeal whereas the instant case is at the stage of summoning where only prima facie case is to be seen in the light of the law laid down by the Supreme Court in the 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, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cr.) 192** and lastly **Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cr.) 283**. The disputed defence of the accused cannot be considered at this stage.

14. In view of the aforesaid facts and circumstances of the case, it cannot be said that no offence is disclosed against the applicant and as such, entire proceedings cannot be quashed and nipped in

the bud when the entire evidence is yet to come.

15. In view of the foregoing discussion, the impugned order dated 20.9.2022 passed by the court below is just, proper and legal and the entire proceedings cannot be quashed by invoking the power u/s 482 Cr.P.C.

16. The present application u/s 482 Cr.P.C. is devoid of merit and is accordingly dismissed.

Order Date :- 7.11.2023
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