

Court No. - 91

Case :- APPLICATION U/S 482 No. - 38671 of 2023

Applicant :- Nitish And 3 Others

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

Counsel for Applicant :- Rajesh Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar,J.

Heard learned counsel for the applicants and learned A. G. A. and perused the record.

This application under Section 482 Cr. P. C. has been filed by applicants with a prayer to quash the charge sheet dated 20.04.2023 along with cognizance /summoning order dated 13.07.2023 as well as the entire proceeding of Criminal Case No.59 of 2023 (State Vs. Nitish and others), arising out of NCR No. 121 of 2022, under Sections 323, 504 I.P.C., P.S. Kothibar, District- Maharajganj, pending in the court of Additional Chief Judicial Magistrate, District Maharajganj.

It is submitted by learned counsel for the applicant that initially NCR No.121 of 2022 was filed, however, after obtaining the order under section 155(2) Cr.P.C. the investigating officer started investigation and finally after concluding the investigation submitted charge sheet under sections 323, 504 IPC which is non cognizable offence.

The main contention of learned counsel for the applicant is that the order of cognizance dated 13.07.2023 is defective as case should have proceeded as a complaint case not as a State case. No observation in the order has been passed by the trial Court while taking cognizance. He further submits that the offence is bailable and non-cognizable as per 1st Schedule of Cr.P.C. and accordingly, the provisions of Explanation to Section 2(d) of Cr.P.C., the charge-sheet filed before the Magistrate is to be treated as complainant and so the order of Magistrate taking cognizance dated 13.07.2023 is liable to be quashed.

Per contra, learned A.G.A. though did not dispute the legal position provided in Section 2(d) of Cr.P.C. but contended that the application under Section 482 Cr.P.C. for quashing the proceedings of criminal case is malafide and misconceived and is liable to be dismissed.

Before proceeding further, the relevant provisions of Section 2 (d) of Cr.P.C. are being reproduced for ready reference as under:-

"Section 2(d) of Code of Criminal Procedure, 1973

2. Definitions.--In this Code, unless the context otherwise requires,--

(d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report. 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."

Upon hearing learned counsel for the applicant as well as learned A.G.A. and perusal of record, I find that it may not be disputed that offences under Sections 323, 504 I.P.C. are bailable and non-cognizable and so the provisions of explanation to Section 2(d) are applicable to the case. The Magistrate has taken cognizance without considering the provisions of Section 2(d) Cr.P.C. and its explanation clause. Undoubtedly in view of the provisions of Section 2(d) Cr.P.C., the Magistrate was required to adopt the procedure of a complaint case as provided.

In view of the discussions made above, this Court came to the conclusion that impugned order of cognizance and summoning order dated 13.07.2023 upon charge-sheet in a case arising out of NCR in respect of bailable and non-cognizable offences is wrong and incorrect and is liable to be quashed.

The application is allowed accordingly and the impugned order dated 13.07.2023 is quashed with a direction to learned Magistrate for passing appropriate order in accordance with law as well as provisions of explanation to Section 2(d) Cr.P.C.

Let a copy of this order be sent to court below for proceeding with the case in accordance with law.

Order Date :- 30.10.2023

v.k.updh.