

Court No. - 89

Case :- APPLICATION U/S 482 No. - 38624 of 2023

Applicant :- Malkhan Singh And Another

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

Counsel for Applicant :- Gorakh Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma,J.

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

This application u/s 482 Cr.P.C. has been filed by the applicants for quashing the entire proceeding and charge-sheet dated 31.01.2019 in case crime no.773 of 2018, case no.1745 of 2020 U/s 406, 420 IPC P.S. Surajpur, District Gautam Budh Nagar and cognizance order dated 30.09.2020 passed by IInd Additional Chief Judicial Magistrate, Gautam Budh Nagar.

It is submitted by learned counsel for the applicants that impugned cognizance/summoning order has been passed on a printed proforma by filling the blanks and it has been passed without application of judicial mind and as such, it is not sustainable in the eyes of law. Learned counsel for the applicants further submits that since cognizance order of co-accused persons was set aside and allowed by the coordinate Bench of this Court, therefore the accused applicants are also entitled for the same relief. Learned counsel for the applicants has placed reliance on the judgment of this Court in the case of *Ankit Vs. State of U.P. and another, reported in 2009(9) ADJ page 778*.

On the basis of aforesaid judgment, it has been submitted by learned counsel for the applicants that summoning of accused in criminal case is a serious matter and the order impugned reflects that the Magistrate had not applied its judicial mind, as in the present case the impugned cognizance/summoning order has been passed on printed proforma, which clearly indicates that the same has been passed without applying judicial mind and the learned Magistrate only put its signature at the bottom of order.

On the other hand, learned AGA has submitted that summoning order has been passed by the learned Magistrate after considering

the material which are available on record, but he could not dispute the fact that the order taking cognizance has been passed on the printed proforma.

The present case is finally decided at the admission stage itself without issuing notice to the opposite party no.2.

From bare perusal of impugned cognizance/summoning order, it is apparent that it has been passed on a printed proforma by filling the blanks and it appears that the blanks were filled up by some staff of the concerned Magistrate and the concerned Magistrate has only put its initial at the bottom of summoning order.

The law on this point is well settled that prior to taking cognizance and issuing summons to the accused-persons, the concerned Magistrate has to apply its judicial mind and that the cognizance/summoning order cannot be passed in a mechanical manner.

In view of above, since impugned cognizance/summoning order has been passed on a printed proforma by filling the blanks without application of judicial mind and as such, it is not sustainable in the eyes of law.

Accordingly the application under section 482 Cr.P.C. is **allowed**. The impugned cognizance/summoning order dated 30.09.2020 is hereby quashed.

The concerned Magistrate is directed to pass a fresh order regarding cognizance as well as summoning of the applicant in the aforesaid case in accordance with law, after applying its judicial mind within a period of two months from the date of production of a copy of this order.

Order Date :- 17.10.2023

Shivangi