

Court No. - 89

Case :- APPLICATION U/S 482 No. - 38596 of 2023

Applicant :- Gurul Mishra

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

Counsel for Applicant :- Ram Milan Dwivedi, Anil Kumar Dubey, P.K. Singh

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma, J.

1. Heard learned counsel for the applicant and the learned A.G.A. for the State.

2. This application under Section 482 Cr.P.C. has been filed by the applicant with a prayer for quashing the charge-sheet dated 04.06.2023, under Sections 323, 504, 506 I.P.C., Police Station Karwi Kotwali Nagar, District Chitrakoot and cognizance order dated 30.08.2023, in CrI. Case No.4050 of 2023 (State Vs. Gurul Mishra) Case Crime No.0265 of 2023, pending in the Court of learned Chief Judicial Magistrate, Chitrakoot.

3. Learned counsel for the applicant submits that the opposite party no.2 lodged an FIR as Case Crime No.0265 of 2023, under Sections 323, 504, 506 I.P.C. After investigation, the police submitted a charge-sheet against the applicant under Section 323, 504 and 506 I.P.C. in the court of Chief Judicial Magistrate, Chitrakoot which was registered as State case.

4. Learned counsel for the applicants next submits that the offences under Sections 323 and 504 I.P.C. are non-cognizable, hence in view of Explanation to Section 2 (d) Cr.P.C., the case could not proceed as State Case and it had to proceed as a complaint case. He further submits that the concerned Magistrate has erroneously passed an order taking cognizance on the charge-sheet.

5. It is clear from the above that all the offences punishable under Sections-323 and 504 are non-cognizable.

Explanation to Section 2 (d) Cr.P.C. runs as follows :-

"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."

6. In view of the said explanation, report of the Police Officer, after investigation, disclosing commission of non-cognizable offence is to be deemed to be a complaint and the Police Officer, who submitted the report has to be deemed to be a complainant. In other words, the charge sheet submitted by the Police in a non-cognizable offence shall be treated to be a complaint and the procedure prescribed for hearing of the complaint case shall be applicable to that case.

7. In the present case from the material on record, it transpires that the charge sheet submitted by the Investigating Officer instead of being treated as a complaint case, has been taken cognizance of by the concerned Magistrate as a State Case, which is not permissible under law.

8. Learned A.G.A. vehemently opposed the submissions made by the learned counsel for the applicant.

9. After having considered the submissions made by the learned counsel for the parties and perused the material on record, as well as examined the relevant provisions of the Code of Criminal Procedure, I am of the view that the submissions made by the learned counsel for the applicant have force and are liable to be accepted.

10. For the aforesaid reasons, the present case be treated as a complaint case and the procedure prescribed for hearing of the complaint shall be followed by the court concerned before summoning the applicants.

11. With the aforesaid observations, this application stands disposed of.

Order Date :- 17.10.2023

Meenu Singh