

Court No. - 89

Case :- APPLICATION U/S 482 No. - 38865 of 2023

Applicant :- Rishi And 3 Others

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

Counsel for Applicant :- Ved Prakash Mishra

Counsel for Opposite Party :- G.A.,Anil Kumar Dubey

Hon'ble Deepak Verma,J.

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

2. This application under Section 482 Cr. P. C. has been filed by applicants with a prayer for quashing the charge sheet dated 16.10.2022, cognizance order dated 04.08.2023 as well as entire proceedings of Case No.345 of 2023 (State Vs. Rishi and others), arising out of Case Crime No.312 of 2022 under Sections 323 and 504 I.P.C., P.S.-Jahanabad, District-Pilibhit, pending in the court of Additional Civil Judge (JD) II, Pilibhit.

3. Learned counsel for the applicants submitted that the applicants have been falsely implicated in aforesaid Case Crime in which after investigation charge-sheet has been submitted under Sections 323 and 504 I.P.C. and both the offences are 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 /Civil Judge is to be treated as complaint and so the order of Magistrate/Civil Judge taking cognizance dated 4.08.2023 is liable to be quashed.

4. *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 *mala fide* and misconceived and is liable to be dismissed.

5. 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."

6. Upon hearing learned counsel for the parties 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/Civil Judge 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/Civil Judge was required to adopt the procedure of a complaint case as provided.

7. In view of the discussions made above, this Court came to the conclusion that impugned order of cognizance dated 4.8.2023 upon charge-sheet in a case arising out of aforesaid Case Crime in respect of bailable and non-cognizable offences is wrong and incorrect and is liable to be quashed.

8. The present 482 application is **allowed** accordingly and the impugned order dated 04.08.2023 is quashed with a direction to learned Magistrate/Civil Judge for passing appropriate order in accordance with law as well as provisions of explanation to Section 2(d) Cr.P.C.

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

Order Date :- 19.10.2023

Pravesh Mishra