

Court No. - 91

Case :- APPLICATION U/S 482 No. - 38448 of 2023

Applicant :- Surendra Prasad

Opposite Party :- State Of U.P. Through Secretary Home And 3 Others

Counsel for Applicant :- Subash Chandra Srivastava, Rampyare Lal Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar, J.

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

By moving this application u/s 482 Cr.P.C., the prayer is made to quash the further proceedings of case no.17117 of 2023 (State vs. Surendra) U/s 353, 506, 504 IPC dated 20.06.2023 and summoning order dated 22.08.2023 arising out of Case Crime No.188 of 2023, under sections 186, 353, 506 IPC, Police Station Khadda, District Kushinagar pending before Chief Judicial Magistrate, Kushinagar at Padrauna.

Submission of learned counsel for the applicants is that from perusal of the impugned order dated 22.08.2023, it appears that there is no narration of the case to which the learned CJM, Kushinagar has applied his mind. Further submission is that the order impugned passed by the trial court is bad in the eyes of law, hence, the order impugned is liable to be set aside remanding the matter to the trial court to decide afresh after passing speaking and reasoned order. He also submits that no finding has been recorded by concerned Magistrate while passing the impugned summoning order.

Learned AGA has opposed the prayer but could not dispute the aforesaid facts.

From a bare perusal of the impugned order, it reflects that there is nothing which may indicate that learned Magistrate had even considered facts of the case in hand before passing the summoning order. Impugned order clearly lacks the reflection of application of judicial discretion or mind. Nothing is there which may show that learned Magistrate, before passing of the order under challenge

had considered facts of the case and evidence or law. Therefore it appears that, in fact, no judicial mind was applied before the passing of impugned order of summoning. Such order cannot be accepted as a proper legal judicial order passed after following due procedure of law.

Considering the facts and circumstances of the case as well as submissions advanced by learned counsel for the parties, the order impugned dated 22.08.2023 is cryptic one and lacks application of mind at the part of the CJM concerned, the continuance of which is tantamount to abuse of process of Court.

Hence, the impugned order dated 22.08.2023 is hereby set aside. The matter is remanded back to the trial court concerned to decide the matter afresh in accordance with law, within a period of one month from the date of production of certified copy of this order.

With the above direction the application under section 482 Cr.P.C. is **disposed of** finally.

Order Date :- 3.11.2023

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