

Court No. - 91

Case :- APPLICATION U/S 482 No. - 38915 of 2023

Applicant :- Vishvanath Pratap Singh

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Brijesh Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar,J.

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

2. By moving this application u/s 482 Cr.P.C., the prayer is made to set aside the summoning order dated 28.09.2022 passed by learned Additional Special Judge Drugs & Cosmetics Act, Court No.5, Agra in Complaint Case No.167 of 2022 (State Vs. Vishvanath Pratap Singh), under sections 18, 18(c), 27(b)(ii) and 28 of Drug and Cosmetics Act 1940, Police Station Tajganj, District Agra, pending in the court of Additional Special Judge Drugs & Cosmetics Act, Court No.5, Agra.

3. It is submitted by learned counsel for the applicant that on the basis of false and frivolous allegations a complaint has been filed against the applicant. It is further submitted that applicant is not the license holder of the shop regarding which the complaint has been filed. He is just a friend of the owner/ license holder of the shop. Submission is that the order is non-speaking and a cryptic one which is not sustainable 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 Sessions Judge while passing the impugned summoning order.

4. Learned AGA has opposed the prayer but could not dispute the aforesaid facts.
5. From a bare perusal of the impugned order, it reflects that there is nothing which may indicate that learned Sessions Judge 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 Sessions Judge, 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.
6. Considering the facts and circumstances of the case as well as submissions advanced by learned counsel for the parties, the order impugned dated 28.09.2022 is cryptic one and lacks application of mind at the part of the Additional Special Judge Drugs & Cosmetics Act concerned, the continuance of which is tantamount to abuse of process of Court.
7. Hence, the impugned order dated 28.09.2022 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.
8. With the above direction the application under section 482 Cr.P.C. is **disposed of** finally.

Order Date :- 4.12.2023

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