

Court No. - 86

Case :- APPLICATION U/S 482 No. - 39268 of 2023

Applicant :- Sonu Rathore And Another

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

Counsel for Applicant :- Shitala Sahay Srivastav,Sheetala Prasad Pandey,Sudhir Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta,J.

1. Heard learned counsel for applicants, learned A.G.A. for State and perused the record.
2. This application under Section 482 Cr.P.C. has been filed with the prayer to quash the impugned charge-sheet no. 683 of 2022, dated 14.12.2022 and cognizance order dated 03.07.2023 as well as entire proceedings of Case No.13540 of 2023 (State Vs. Ajay and Others), arising out of Case Crime No.254 of 2022, under Section 406 IPC, Police Station Akbarpur, District Kanpur Dehat, pending in the court of Chief Judicial Magistrate, Kanpur Dehat.
3. At the very outset, learned counsel for applicants submits that initially an F.I.R. was lodged under Section 379 IPC against the applicants and other co-accused person. Further submission is that after investigation, the Investigating Officer in a perfunctory manner has submitted charge sheet for the offence under Section 406 IPC. Further submission is that no offence is made out against the applicant, as such, impugned charge-sheet as well as entire proceedings of aforesaid case are liable to be quashed by this Court.
4. Per contra, learned AGA has submitted that it is a disputed question of fact if there has been a theft from the possession of the opposite party no.2 or there has been an entrustment of property to the applicants and other co-accused person, which cannot be heard and decided at this stage.
5. From the perusal of material on record and looking into the facts of the case, at this stage it cannot be said that no offence is made out against the applicants. All the

submissions made at the bar relates to the disputed question of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C. At this stage only prima facie case is to be seen in the light of the law laid down by Supreme Court in cases of ***R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P.Sharma, 1992 SCC (Cr.) 192 and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283.*** The disputed defence of the accused cannot be considered at this stage.

6. Moreover, the applicants have got a right of discharge under Section 239, 245(2) or 227/228 Cr.P.C., as the case may be, before the court below and they are free to take all the submissions in the said discharge application before the trial court.

7. The prayer for quashing the proceedings of case as well as charge sheet is therefore refused.

8. At this stage, learned counsel for the applicants submit that applicants may be permitted to move discharge application before the court concerned.

9. Keeping in view the facts and circumstances of the case, it is directed that the applicants will move a proper application for discharge within four weeks from today and they are free to take all the submissions in the said discharge application before the trial court, which shall be considered and disposed of by the trial court in accordance with law within a period of two months. For a period of four weeks from today, no coercive action shall be taken against the applicants.

10. With the aforesaid directions, the present application under Section 482 CrPC is finally **disposed of**.

Order Date :- 22.11.2023

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