

Court No. - 91

Case :- APPLICATION U/S 482 No. - 39777 of 2023

Applicant :- Khalilurrahman

Opposite Party :- State of U.P.

Counsel for Applicant :- Gulrez Khan, Javed Husain Khan, Pervez Husain Khan, Sr. Advocate

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 quash the order dated 29.09.2023 and remit the case back to the learned Additional Chief Judicial Magistrate, Prayagraj to pass a fresh order after considering the facts stated in the application under section 156(3) Cr.P.C, the police report and materials on record/ in the meantime the further proceeding in pursuance of the impugned order dated 29.09.2023 be stayed during the pendency of the application to secure the ends of justice.
3. Submission of learned counsel for the applicants is that from perusal of the impugned order dated 29.09.2023, it appears that there is no narration of the case of the complaint to which the learned ACJM, Prayagraj 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.
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 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.

6. Considering the facts and circumstances of the case as well as submissions advanced by learned counsel for the parties, the order impugned dated 29.09.2023 is cryptic one and lacks application of mind at the part of the ACJM concerned, the continuance of which is tantamount to abuse of process of Court.

7. Hence, the impugned order dated 29.09.2023 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 two months 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 :- 30.10.2023

SFH