

Court No. - 92

Case :- APPLICATION U/S 482 No. - 39022 of 2023

Applicant :- Shivakant Mishra

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

Counsel for Applicant :- Yogesh Kumar Vaish

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Yogesh Kumar Vaish, learned counsel for the applicant and Sri Prem Prakash Tiwari, learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the summoning /cognizance order dated 04.11.2016 in Special Trial No. 39 of 2008 u/S 392 I.P.C., P.S.- Girwan, District- Banda, pending in the court of learned Special Judge (Dacoity Affected Area Act), Banda.

3. Learned counsel for the applicant submits that he was posted as munshi at the relevant point of time in the concerned police station and the concerned SHO has gone for an investigation for an offence u/S 307 I.P.C., and under Section 12/14 of DAA Act, in Case Crime No. 95 of 2008 as well as 25/27 of the Arms Act, being Case Crime No. 96 of 2008, for investigation and recovery of the weapons of the offence in discharge of their duty. As a counter blast to the said investigation and consequent recovery done by the SHO from the house of the opposite party no.2, from the son of the opposite party no.2, the instant prosecution has been lodged by the opposite party no.2 against the concerned SHO wherein the applicant herein has also been implicated falsely whereas there is no proof of any involvement of the applicant herein. Therefore, he has prayed for quashing of the entire proceedings of the said case against the applicant herein.

4. On the other hand, learned counsel for the State submits that the instant case has been duly investigated by the Investigation Agency. After due investigation, having found the involvement of the applicant as well as the concerned SHO, in the instant case for the offences alleged against them the charge-sheet has been filed for which a cognizance has already been taken on 04.11.2016 against applicant as well as the concerned SHO. Therefore, it can't be said that there is no material against the applicant herein, for no offence is made out against the

applicant herein. The applicant has not filed any proof to show that at the relevant time he was at the police station and not at the place of incident, which has been alleged in the instant F.I.R. in the instant case. In view thereof, no interference is called for in the instant case. Learned counsel for the State further submits that in an Application u/S 482 No. 31045 of 2023 filed by the co-accused, the concerned SHO, Ahtasamuddin Siddiqui vs. State of U.P. and Another, this Court has already been replied to entertain to petition. Therefore, no interference is called for.

5. Having heard the submissions made by learned counsels for the parties, this Court has carefully gone through the record of the case and from the record of the case, it is apparent that clear and categorical allegations have been made against the applicants herein and the applicant has not shown any prima facie material to show that he was present at the place of incident at the relevant point time and the Investigation Agency has duly investigated the matter and has filed the charge-sheet against the applicant for which a cognizance was taken on 04.11.2016 and the instant application has been filed about seven years later to the cognizance taken by the learned Magistrate. Therefore, from the records it appears that non-bailable warrants issued against the applicant, however, he is still avoiding the process. In view thereof and in the the considered opinion of this Court, no interference is called out.

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

7. Keeping in view the facts and circumstances of the case, it is directed that the applicants will move a proper application for discharge through counsel within one month 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.

8. Accordingly, the present application is **disposed of**.

9. For a period of one month, no coercive action shall be taken against the applicants.

Order Date :- 28.11.2023

Shubham Arya