

Court No. - 88

Case :- APPLICATION U/S 482 No. - 39765 of 2023

Applicant :- Sadaruddin And 2 Others

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

Counsel for Applicant :- Saurabh Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Vinod Diwakar,J.

1. Heard learned counsel for the applicants and learned AGA for the State, and perused the record.

2. This application under Section 482 Cr.P.C. has been filed by the applicants to quash the charge-sheet dated 8.7.2022 and summoning order dated 26.11.2022 passed by Judicial Magistrate, Court No.14, Azamgarh as well as entire proceedings of the Case No.NIL (State v. Sadaruddin and others), arising out of Case Crime/NCR No.101 of 2021, under sections 323, 504 IPC, Police Station Tarwan, District Azamgarh, pending before Fast Track Court (Senior Division), Azamgarh.

3. Learned counsel for the applicants submits that the offences under Sections 323, 504 IPC are non-cognizable. Hence, in view of Explanation to Section 2(d) Cr.P.C., the case could not proceed as State Case, and it had to proceed as a complaint case. He further submits that the concerned Magistrate has erroneously passed an order taking cognizance on the charge-sheet.

4. It is clear from the above that the offences punishable under Sections 323, 504 IPC are non-cognizable.

5. Explanation to Section 2(d) Cr.P.C. is reproduced as under:

"Explanation.- A report made by a police officer in a case which discloses, after investigation, the commission of a non- cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant."

6. In view of the said explanation, report of the Police Officer, after investigation, disclosing commission of non-cognizable offence is to be deemed to be a complaint and the Police Officer,

who submitted the report has deemed to be a complainant. In other words, the charge-sheet submitted by the Police in a non-cognizable offence shall be treated to be a complaint and the procedure prescribed for hearing of the complaint case shall be applicable to that case.

7. In the present case from the material on record, it transpires that after submission of the charge-sheet by the Investigating Officer, the concerned Magistrate instead of treating it a complaint case has treated it a State case and has taken cognizance, which is not permissible under law.

8. Learned A.G.A. does not dispute the aforesaid legal submission advanced on behalf of the applicants.

9. Having considered the submissions made by learned counsel for the parties and from perusal of the material on record as well as the Code of Criminal Procedure, I am of the view that the submissions made by the learned counsel for the applicants have force and are liable to be accepted.

10. For the aforesaid reasons, impugned cognizance/summoning order dated 26.11.2022 passed by Judicial Magistrate, Court No.14, Azamgarh is quashed. The matter is remanded back with a direction to the concerned court below to pass fresh order treating the charge-sheet dated 8.7.2022 as a complaint and the procedure prescribed for hearing of the complaint case shall be followed by the court concerned before summoning the applicants.

11. With the aforesaid observations, this application stands disposed off.

Order Date :- 24.11.2023

Anil K. Sharma

[Vinod Diwakar, J.]