

Court No. - 86

Case :- APPLICATION U/S 482 No. - 39175 of 2023

Applicant :- Nirmla Devi And Another

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

Counsel for Applicant :- Dharmaveer Singh, Shivendra Nath Singh

Counsel for Opposite Party :- G.A., Yogesh Kumar Tripathi

Hon'ble Rajiv Gupta, J.

1. Heard learned counsel for the applicants, learned A.G.A. for the State, Shri Yogesh Kumar Tripathi, learned counsel for the opposite party no.2 and perused the record.

2. The present application under Section 482 Cr.P.C. has been filed with the prayer to quash the impugned charge-sheet dated 26.08.2022 and cognizance/ summoning order dated 30.08.2022 as well as entire proceedings of Case No. 26482 of 2022 (State Vs. Baburam and Others), arising out of Case Crime No. 85 of 2022, under Sections 307, 323, 352, 504, 506 IPC, Police Station Sikriganj, District Gorakhpur, pending in the court of Judicial Magistrate-II, Gorakhpur.

3. Learned counsel for the applicants has submitted that from perusal of the allegations made in the FIR and material collected during the course of investigation, no offence is disclosed against the applicants. He has also pointed out certain documents and statements in support of his contention and has further submitted that present criminal case has been instituted with a malafide intention for the purpose of harassment and as such, impugned charge-sheet and summoning order as well as entire proceedings be quashed.

4. Learned counsel for the applicants has next submitted that the applicants had already been directed to be released on bail.

5. Per contra, learned AGA has submitted that from perusal of the allegations made in the FIR and material collected during the course of investigation, prima facie offence is clearly made out against the applicants and as such, impugned charge-sheet and summoning order as well as entire proceedings cannot be quashed.

6. From perusal of the 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 relate to the disputed questions of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C.

7. At this stage, only prima facie case is to be seen in the light of the law laid down by Hon'ble Supreme Court in the 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.

8. Moreover, the applicants had already been directed to be released on bail and they have got right of discharge under Section 239, 245 or 227 Cr.P.C., as the case may be, through a proper application for the said purpose and they are free to take all the submissions in the said discharge application before the trial court.

9. At this stage, this Court is not in a position to weigh the factual matrix of the case properly and accused has right to file discharge application before the trial court and the trial court may decide their discharge application, if there is no evidence against them.

10. The prayer for quashing the impugned charge-sheet and summoning order as well as entire proceedings is therefore refused.

11. However, it is directed that in case the applicants file an application for discharge before the court below, then the court below shall consider each and every aspect of the matter and shall pass a detailed order on the said discharge application expeditiously in accordance with law after hearing both the parties.

12. With the aforesaid directions, this application under Section 482 Cr.P.C. is finally **disposed of**.

Order Date :- 8.11.2023

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