

Court No. - 89

Case :- APPLICATION U/S 482 No. - 40965 of 2023

Applicant :- Ashok Yadav

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

Counsel for Applicant :- Sanjay Kumar Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma,J.

1. Heard learned counsel for the applicant as well as learned A.G.A. for the State and perused the record.
2. This application under Section 482 Cr.P.C. has been filed by the applicant to quash the entire proceedings of Criminal Case No.2120 of 2022, arising out of Case Crime No.49 of 2019, under Sections 406, 504 IPC, Police Station- Sikriganj, District- Gorakhpur as well as charge sheet dated 12.08.2019, cognizance order dated 09.11.2020, pending in the court of learned Judicial Magistrate -II, Gorakhpur.
3. It is submitted by learned counsel for the applicant that impugned cognizance/summoning order has been passed on a printed proforma by filling the blanks and it has been passed without application of judicial mind and as such, it is not sustainable in the eyes of law. Learned counsel for the applicant has placed reliance on the judgment of this Court in the case of **Ankit Vs. State of U.P. and another, reported in 2009(9) ADJ page 778.**
4. On the basis of aforesaid judgment, it has been submitted by learned counsel for the applicant that summoning of accused in criminal case is a serious matter and the order impugned reflects that the Magistrate had not applied its judicial mind, as in the present case the impugned cognizance/summoning order has been passed on printed proforma, which clearly indicates that the same has been passed without applying judicial mind and the learned Magistrate only put its signature at the bottom of order.
5. On the other hand, learned AGA has submitted that summoning order has been passed by the learned Magistrate after considering the material which are available on record, but he could not dispute the fact that the order taking cognizance has been passed on the printed proforma.

6. The present case is finally decided at the admission stage itself without issuing notice to the opposite party no.2.

7. From bare perusal of impugned cognizance/summoning order, it is apparent that it has been passed on a printed proforma by filling the blanks and it appears that the blanks were filled up by some staff of the concerned Magistrate and the concerned Magistrate has only put its initial at the bottom of summoning order.

8. The law on this point is well settled that prior to taking cognizance and issuing summons to the accused-persons, the concerned Magistrate has to apply its judicial mind and that the cognizance/summoning order cannot be passed in a mechanical manner.

9. In view of above, since impugned cognizance/summoning order has been passed on a printed proforma by filling the blanks without application of judicial mind and as such, it is not sustainable in the eyes of law.

10. Accordingly the application under section 482 Cr.P.C. is **allowed**. The impugned cognizance/summoning order dated 09.11.2020 is hereby quashed.

11. The concerned Magistrate is directed to pass a fresh order regarding cognizance as well as summoning of the applicant in the aforesaid case in accordance with law, after applying its judicial mind within a period of one month from the date of production of a copy of this order.

Order Date :- 6.11.2023

Nitin Verma