

Court No. - 87

Case :- APPLICATION U/S 482 No. - 40640 of 2022

Applicant :- Aishwarya Chandra

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

Counsel for Applicant :- Shitala Sahay Srivastav, Alka Pandey, Archana Srivastava, Vinod Kumar Kushwaha

Counsel for Opposite Party :- G.A., Ajay Kumar Srivastava, Dharendra Kumar Srivastava, Vimal Kumar Bhaskar

Hon'ble Neeraj Tiwari, J.

1. Heard learned counsel for the applicant and learned AGA for the State.
2. The present 482 Cr.P.C. application has been filed to quash the charge sheet dated 11.08.2021 and summoning order dated 29.11.2021 passed in Case No. 10078 of 2021(State Vs. Indresh Chandra Srivastava and others), arising out of Case Crime No. 103 of 2021, as well as the entire proceedings of Case No. 10078 of 2021(State Vs. Indresh Chandra Srivastava and others), under Sections- 323, 504 I.P.C., Police Station- Suriyawan, District- Bhadohi, pending in the court of Judicial Magistrate-Bhadohi.
3. Learned counsel for the applicant submits that the present prosecution has arisen out of NCR. It is stated that the offence as alleged are non-cognizable and therefore neither the charge sheet could have been submitted by the Investigating Officer nor the learned Magistrate could have taken cognizance in view of the explanation under Section 2(d) of Cr.P.C.
4. It is further stated that the only course open to the learned Magistrate was to have treated the case as a complaint case and to have proceeded with, in accordance with law.
5. Reliance has been placed on the decision of this Court dated 15.05.2018 passed in Application U/S 482 No. 5917 of 2006 wherein this Court has taken view that neither the charge sheet could have been submitted by the Investigating Officer nor the learned Magistrate could have taken cognizance on the same, treating it as a State case.
6. Learned AGA on the other hand submits that while the learned

Magistrate may not have taken cognizance on the charge sheet treating it to be a State case. However, it was open to the learned Magistrate to follow the complaint case procedure.

7. Considering the above, no useful purpose would be served in keeping the present application pending any further. The orders dated 11.08.2021 and 29.11.2021 are set aside and the matter is remitted to the learned Magistrate to pass a fresh order, strictly in accordance with law, keeping in mind the observations made above.

8. The aforesaid exercise may be concluded as expeditiously as possible, preferably within a period of two months from the date of production of a certified copy of this order.

9. With the aforesaid observations, the present application is **disposed of**.

Order Date :- 16.11.2023

ADY