

Court No. - 92

Case :- APPLICATION U/S 482 No. - 40009 of 2023

Applicant :- Jitendra Yadav And 6 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Shamasul Eslam

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Shamasul Eslam, learned counsel for the applicants and Sri Rajesh Kumar Singh, learned AGA for the State.
2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the charge sheet dated 02.07.2023 as well as cognizance / summoning order dated 27.09.2023 and the entire proceeding of Case No. 10734 of 2023 (State vs. Jitendra Yadav and others) arising out of Case Crime No. 106 of 2023, under Sections 147, 354-B, 452, 323, 504, 325, 308 IPC, P.S. Sahatwar, District Ballia, pending before the learned Judicial Magistrate-II, Ballia.
3. Learned counsel for applicants submits that for an incident dated 03.02.2023, the opposite party no.2 has falsely implicated the entire family members, who are the applicants herein in the instant case. Learned counsel for applicants further submits that the applicants no. 1, 2, 5 and 6 are the students. The applicant no.1 is studying at J.S. University, Shikohabad and he was not present at the time of incident, therefore, the instant FIR has been lodged on false and fabricated facts against all the family members.
4. Per contra, learned AGA for the State submits that as per the FIR, all the applicants have jointly assaulted the opposite party no.2 and the wife of opposite party no.2 has sustained fracture of right temporal bone and the right zygomatic arch. The said injury was grievous in nature and the opposite party no.2 has also sustained fracture on the finger. Therefore, it cannot be said that no incident as alleged in the FIR and the charge sheet has taken place and there is no record to establish the plea of alibi as has been argued by learned counsel for the applicants. Therefore, learned AGA submits that a prima facie case was

made out against the applicants and the police after due investigation has submitted the charge sheet against them. The learned Magistrate on the basis of material available before him, has taken cognizance in the matter against some of the accused persons. Therefore, there is no illegality in the summoning order passed by the learned Magistrate.

5. Having heard the rival submissions made by learned counsel for the parties, this Court has carefully perused the record of the case. From the cumulative reading of the FIR, the injury report, charge sheet and the statements recorded under Section 161 and 164 Cr.P.C., it cannot be said that no offence as alleged against the applicants is made out. On a query made by the Court, learned counsel for the applicants has failed to show any document to establish that any of the applicants was not present at the time of the alleged incident. Therefore, the police has duly investigated the matter and after recording the statements of various witnesses and submitted the charge sheet against the applicant and on the basis of the material available, the learned Magistrate has taken cognizance against the applicants. The veracity of the allegations are to be tested during the trial of the case.

6. From the perusal of the F.I.R as well as the charge sheet and summoning order, it can't be said that no offence whatsoever is made out against the applicants herein. Therefore, in the light of the judgments in **R. P. Kapoor Vs. State of Punjab, AIR 1960 S.C. 866; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] and Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others : 2021 SCC OnLine SC 315**, this Court does not find any good ground for quashing the proceedings, as prayed by learned counsel for the applicant. Hence an Application under Section 482 is hereby **dismissed**.

Order Date :- 4.12.2023

Ashish Pd.