Court No. - 89

Case :- APPLICATION U/S 482 No. - 40164 of 2023

Applicant :- Samiullah And 2 Others
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Anand Pal Singh,Harish Chandra Singh
Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma,J.

1. Heard learned counsel for the applicants and learned A.G.A. for the State.

2. The present application under Section 482 Cr.P.C. has been filed for quashing the Charge sheet No.Nil of 2018 dated 30.05.2018 submitted in N.C.R. No.94 of 2016, under Sections 323, 504, 427 IPC, P.S. - Ghughuli, District - Maharajganj as well as Bailable Warrant order dated 19.1.2023 passed by Additional Chief Judicial Magistrate (Senior Division), Maharajganj registered as Case No.4578 of 2018 (State vs. Samiullah and others) pending before Additional Chief Judicial Magistrate (Senior Division), Maharajganj.

3. It is contended by learned counsel for the applicants that charged sections are non-cognizable offences, therefore, learned Magistrate may pass an order taking cognizance if he so desires by proceeding under Chapter XV of the Code of Criminal Procedure. Reliance has been placed on explanation to Section 2(d) of Code of Criminal Procedure. It is next contended that no permission was taken under Section 155(2) Cr.P.C.

4. Learned A.G.A. has stated that no useful purpose would be served in issuing notice to the opposite party no.2 as it will only delay the proceedings of the present case and has not disputed the legal position on the issue.

Explanation to Section 2(d) of Code of Criminal Procedure, reads as follows:-

"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 complaint."

5. When a charge sheet is filed only of non-cognizable offences, in view of the aforesaid provision, the charge sheet should be treated as a complaint. The argument is well founded, therefore, the order taking cognizance is set aside.

6. The case is remanded to the Magistrate, who may pass an order of taking cognizance if, he so chooses, treating this matter as a complaint case under Chapter XV of the Code of Criminal Procedure. While doing so, the concerned Magistrate

shall also take note the Proviso (a) to Section 200 Cr.P.C., which reads as follows:-

"Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses."

(a) If a public servant acting or purporting to act in discharge of his official duties or a Court has made the complaint;"

7. With these observations, this application is finally **disposed of**.

Order Date :- 1.11.2023
SKD

Digitally signed by :-
SURJIT KUMAR DEY
High Court of Judicature at Allahabad