

Court No. - 91

Case :- APPLICATION U/S 482 No. - 41913 of 2023

Applicant :- Deen Dayal Dwivedi

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

Counsel for Applicant :- Raj Kumar Kesari

Counsel for Opposite Party :- G.A.,Ravindra Balkrishna Kanhere

Hon'ble Gajendra Kumar,J.

1. Heard learned counsel for the applicant as well as the learned AGA for the State.

2. This application under Section 482 Cr.P.C. has been filed for quashing/set asiding the impugned charge sheet dated 7.8.2023 and impugned cognizance order dated 6.9.2023, passed by Judicial Magistrate, Court No.IV, Allahabad in Criminal Case No.2683 of 2023 (State vs. Ram Kanhaiya Mishra and others) arising out of case crime no.0047/2023, under sections 406, 504, 506 IPC, P.S. Manda, District Allahabad, pending in the court of Judicial Magistrate, Court No.IV, Allahabad.

3. Submission of learned counsel for the applicants is that on the basis of false and frivolous allegation the FIR has been lodged against the applicant and other co-accused persons. It is further submitted that I.O. has submitted charge sheet in a cursory manner and without collecting any material evidence regarding the complicity of the accused persons. It is further submitted that no charge sheet was filed for the offence u/s 504 and 506 IPC. It is further submitted that learned Magistrate in a mechanical way and without assigning any reason or recording the satisfaction that what material has been found the offence u/s 420 IPC is not made out and offence u/s 504 and 506 IPC is made out. The cognizance has been taken and the applicant has been summoned by the learned Magistrate in a very mechanical way. The manner in which the proceeding is being initiated is nothing but it is an abuse of process of court.

4. Per contra, learned counsel for the opposite party no.2 and learned AGA for the State have opposed the prayer and contended that the I.O. after collecting the material evidence has submitted charge sheet against the applicant and cognizance has been taken by the Judicial Magistrate and there is no illegality in summoning

the applicant.

5. In view of the above, the I.O. has submitted charge sheet only for the offence u/s 420 and 406 IPC. No charge sheet was submitted u/s 504 and 506 IPC. Learned Magistrate without recording satisfaction as on the basis of what material offence u/s 504 and 506 IPC is made out against the applicant and summoned the accused persons. No reason assigned by the learned Magistrate regarding the forming of opinion differentiating from the opinion formed by the I.O. regarding the offence u/s 420 IPC and the order has been passed which reflects that there has been no application of judicial mind and the order has been passed in a mechanical way, which is not sustainable in the eyes of law and liable to be set aside.

6. The application is **disposed off** with the direction to the learned Magistrate to pass fresh order after taking into account the observations as made above, in accordance with law.

Order Date :- 23.11.2023

m.a.