

Court No. - 88

Case :- APPLICATION U/S 482 No. - 40076 of 2023

Applicant :- Asha Kumari And Another

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

Counsel for Applicant :- Krishna Kant Shukla,Rajesh Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

1-Heard learned counsel for the applicants, learned Additional Government Advocate for the State of U.P./opposite party no.1 and perused the record.

2-This application under Section 482 Cr.P.C. has been filed by the applicants to quash the summoning order dated 17.09.2022 passed by learned Chief Judicial Magistrate, Mirzapur as well as proceedings of Case No. 6371 of 2022 (State Vs. Asha Kumari and another) arising out of Case Crime No. 81 of 2022, under Section 379 I.P.C., Sections 4/21 Mines and Minerals (Development and Regulation) Act, Sections 3, 57,511 of U.P. Sub Mineral (Transportation) Rule, 1963 and Section 3 of the Prevention of Damage to Public Property Act, Police Station Madihan, District Mirzapur.

3-The issue involved in the matter lies in a very narrow compass. The main substratum of argument of learned counsel for the applicants is that vide impugned summoning order dated 17.09.2022, the applicant has been summoned under Section 379 I.P.C., Sections 4/21 of Mines and Minerals (Development and Regulation) Act, Sections 3, 57, 511 of U.P. Sub Mineral (Transportation) Rule, 1963 and Section 3 of the Prevention of Damage to Public Property Act to face trial, whereas the Magistrate concerned was not empowered to take cognizance on the police report for the aforesaid alleged offence under Section 4/21 Mines and Minerals (Development and Regulation) Act and Section 3, 57,511 of U.P. Sub Mineral (Transpiration) Rules, 1963 because with regard to same, there is a procedure for filing complaint.

4-Per contra, learned Additional Government Advocate for the State submits that if the act of accused makes out a cognizable offence under Section 379 IPC, Section 3 of the Prevention of Damage to Public Property Act, Sections 4/21 of the MMDR Act

1957 and Sections 3, 57, 511 of U.P. Sub Mineral (Transportation) Rules registration of F.I.R. under those enactments is not illegal as there is no bar to investigate the matter by the police when cognizable offence has taken place irrespective of penal provisions whether under the special enactment or general law, but does not dispute that in view of Section 22 of the Mines and Minerals (Development and Regulation) Act, the applicant cannot be prosecuted for the offence under MMDR Act on the police report.

5-Having heard learned counsel for the parties, I find that pure legal question is involved in the matter therefore no useful purpose would be served in keeping this application pending before this Court and the same is being disposed of with the consent of the counsel for the parties at the admission stage itself.

6-Having examined the matter in its entirety, this Court is of the view that when there is a conflict between a special and general law, indisputably the special enactment shall prevail over the general law.

7-The issue in this regard has been settled by the Apex Court in the matter of (NCT of Delhi) vs. Sanjay (2014) 9 SCC 772 as well as by this Court in the case of Imran and others Vs. State of U.P. and another, (2020) 3 All LJ 21. In the light of law laid down in the aforesaid judgments this Court is of the opinion that so far as cognizance taken by the Magistrate concerned on the impugned charge-sheet for the alleged offence and summoning of accused-applicant vide order dated 17.09.2021 under Sections 4/21 Mines and Minerals (Development and Regulation) Act and Sections 3, 57,511 of U.P. Sub Mineral (Transportation) Rules, 1963 are concerned, the same is not liable to be sustained in the eyes of law on account of categorical bar as noted above.

8-Accordingly, summoning order dated 17.09.2022 and further proceeding of aforesaid Case No. 6371 of 2022 (State Vs. Asha Kumari and another) arising out of Case Crime No. 81 of 2022, under Sections 4/21 Mines and Minerals (Development and Regulation) Act, Sections 3, 57,511 of U.P. Sub Mineral (Transportation) Rule, 1963 are hereby quashed with a liberty to the prosecution/Officer concerned to file a complaint against the applicant in the matter.

9-So far as summoning order dated 17.09.2022 against the applicants under Section 379 I.P.C. and Section 3 of the Prevention of Damage to Public Property Act are concerned, the same are not interfered with, hence, the learned Magistrate shall proceed against

the applicants in accordance with law.

10-With the aforesaid observations and directions, this application under Section 482 Cr.P.C. is partly allowed.

11-Learned AG.A. shall communicate this order to the informant /opposite party no.2 within two weeks.

Order Date :- 29.11.2023

RKM