

Court No. - 92

Case :- APPLICATION U/S 482 No. - 40371 of 2023

Applicant :- Anuj @ Billu And 3 Others

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

Counsel for Applicant :- Sanjay Mishra, Abhay Kumar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Sanjay Mishra, learned counsel for the applicants and Sri Ramesh Kumar, learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the Summoning/Cognizance order dated 12.07.2023 and the entire proceedings of Complaint Case No. 378 of 2021 (Avanish Kumar vs. Anuj @ Billu & Others) u/S 323, 452, 504 I.P.C., P.S.- Usrahar, District- Etawah, pending in the court of learned Civil Judge(J.D.), F.T.C./Judicial Magistrate (C.A.W.), Etawah.

3. Learned counsel for the applicants submits that initially the application u/S 156(3) Cr.P.C. was filed against all the accused persons by the opposite party no.2, which was converted into the complaint case and after recording the statements u/S 200 and 202 Cr.P.C., the earlier summoning order dated 04.01.2022 was passed issuing summons against all the accused persons for the offences u/S 323, 452, 504 I.P.C. against which revision was preferred by the applicants herein being Criminal Revision No. 84 of 2022, which was allowed vide order dated 30.08.2022, whereby the order dated 04.01.2022 was set-aside and matter was remanded back to the learned Magistrate for passing a fresh order in accordance with law. Thereafter, on 12.07.2023, the impugned summoning order has been passed summoning the applicant nos. 1 & 2 for the offences u/S 452 I.P.C and the applicant nos. 3 and 4 for the offences u/S 323, 504 I.P.C. On the basis of contradiction of statements of witnesses, learned counsel for the applicants submits that the instant prosecution is nothing but is based on false and concocted story of the opposite party no.2. Therefore, there are various contradictions in the statements of witnesses, therefore, he has prayed for quashing of the entire proceedings as well as the summoning order dated 12.07.2023.

4. Learned counsel for State submits that from the perusal of the order dated 12.07.2023, there are some repetitions and

contradictions in the findings recorded and the final order passed. Therefore, it requires to be set-aside and the matter is required to be remanded back to the learned Magistrate.

5. Having heard the submissions made by the learned counsels for the parties, this Court has carefully gone through the order dated 12.07.2023 wherein the learned Magistrate has recorded a finding that a prima facie case is out against all the applicants u/S 323, 504 I.P.C. However, only applicant nos. 3 and 4 have been summoned u/S 323, 504 I.P.C., and there is no finding recorded with regard to the offence u/S 452 I.P.C. However, the applicant nos. 1 and 2 have been summoned u/S 452 I.P.C. without recording any finding for prima facie case against them.

6. Therefore, in the considered opinion of this Court, this order deserves to be set-aside and is hereby ***set-aside***. The matter is remanded back to the learned Magistrate, Civil Judge(J.D.), F.T.C./Judicial Magistrate (C.A.W.), Etawah, for passing a fresh order after considering all the materials and after recording the categorical findings with regard to the offences and the summoning order.

7. With the aforesaid observations, the instant application is ***disposed of***.

Order Date :- 22.11.2023
Shubham Arya