

Court No. - 91

Case :- APPLICATION U/S 482 No. - 41088 of 2023

Applicant :- Akhilesh Mishra

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

Counsel for Applicant :- Ajay Tripathi, Akhil Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar, J.

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

2. This application under Section 482 Cr.P.C. has been filed by the applicant with the prayer to quash the charge sheet dated 29.04.2022 and summoning/ cognizance order dated 18.01.2023 as well as entire proceedings of Case No. 68 of 2023, (State v. Akhilesh Mishra & others) arising out of Case Crime No. 259 of 2021, under Sections 147, 323, 504, 506, 394 I.P.C., Police Station Daraganj, District Prayagraj, pending in the court of Special Chief Judicial Magistrate, Allahabad and further prayer to stay the further proceedings of the aforesaid case has been made.

3. It is submitted by learned counsel for the applicants that the opposite party no.2 filed an FIR in Case Crime No.259 of 2021, under Sections 147, 323, 504, 506, 394 I.P.C.. The Investigating Officer after completing Investigation came to the conclusion that offence under section 394 IPC is not made out and submitted charge sheet for the offence under sections 147, 323, 504, 506 I.P.C. and the Special CJM, Allahabad vide order dated 18.01.2023 has taken cognizance even in the section 394 IPC without assigning any reason for differentiating with the I.O. and forming different opinion describing on what material the offence under

section 394 IPC is made out in which the cognizance has been taken by the learned Magistrate. The order has been passed in a mechanical way without application of mind.

4. Learned A.G.A. opposed the prayer but did not dispute the aforesaid facts.

5. Thus, the order impugned dated 18.01.2023 is hereby set-aside. The matter is remanded back to the trial court concerned to decide the matter afresh in accordance with law, within a period of two months from the date of production of certified copy of this order.

6. With the aforesaid observations, the application stands **disposed of**.

Order Date :- 20.11.2023

Shiv