

Court No. - 89

Case :- APPLICATION U/S 482 No. - 40967 of 2023

Applicant :- Shamim And Another

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

Counsel for Applicant :- Raj Singh, Nitin Raj Singh

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma, J.

1. Heard Sri Nitin Raj Singh, learned counsel for the applicants and learned A.G.A. for the State.
2. This application under Section 482 Cr.P.C. has been filed by the applicants to quash the impugned order dated 04.10.2023 passed by Addl. District and Sessions Judge, FTC, Court No.2, Aligarh, under Section 319 Cr.P.C. in ST No.1825 of 2021, U/s 147, 148, 323, 504, 506 I.P.C., P.S. Pali Mukeempur, District Aligarh arising out of Case Crime No.211 of 2021.
3. Learned counsel for the applicants has submitted that applicant has challenged the summoning order dated 04.10.2023 by which the Additional District and Sessions Judge, Aligarh has summoned the applicants in proceedings under Section 319 Cr.P.C. The applicants were not charge-sheeted and summoning by trial court is abuse of process of court. The trial court has not considered the statement recorded during investigation as independent witnesses have given affidavit that applicant is not involved in the crime and Investigating Officer exonerated the applicant. The trial court in arbitrary manner passed the impugned order and illegally summoned the applicant under Section 319 Cr.P.C.
4. Learned A.G.A. opposed the submission raised by applicants' counsel and submitted that as per statement of P.W. 1 and P.W.2 (injured), offence under the aforesaid Section is made out and summoning order is just and proper.
5. Considering the argument raised by applicants' counsel and perused the impugned order dated 04.10.2023, it is evident that trial court has considered the statement of P.W. 1 and P.W. 2 and summoned the applicants. P.W. 1 and P.W. 2 have deposed before trial court that applicants came at the place of incident with *farsa* and assaulted the injured. Summoning of applicants by trial court is based on evidence and testimony of P.W. 1 and P.W. 2 (injured) and after considering various judgements of Hon'ble the Apex

Court and specifically the judgment passed in the case of Hardeep Singh Vs. State of Punjab and others, (2014) 2 SCC CrL. 86. The order passed by learned Addl. District and Sessions Judge, Aligarh is just and proper, as such, no interference is warranted, at this stage.

6. If applicants surrender before the concerned Court below within three weeks from today and apply for bail, the bail application shall be decided expeditiously by the courts below in accordance with law laid down by the Apex Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation** and another, reported in 2021 SCC OnLine SC 922.

7. For the period of three weeks from today or till the time of surrender of the applicants before the Court below, whichever is earlier, no coercive action shall be taken against them.

8. With the aforesaid directions, this application under Section 482 Cr.P.C. stands **disposed of**.

Order Date :- 6.11.2023
Nitin Verma