

Court No. - 86

Case :- APPLICATION U/S 482 No. - 41505 of 2023

Applicant :- Tejpal

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

Counsel for Applicant :- Manoj Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta,J.

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

2. The instant application under section 482 Cr.P.C. has been filed against the order dated 01.09.2023 passed by Special Judge (POCSO/ Additional Sessions Judge, Bareilly whereby the application filed by the applicant under section 216 Cr.P.C. for altering the charge has been rejected.

3. Learned counsel for the applicant has submitted that in the instant case FIR was lodged against the applicant vide Case Crime No. 456 of 2022 under section 354 Gha, 354-K, 376, 511, 506 IPC and section 7/8 POCSO Act and police after concluding the investigation has submitted the charge sheet against the applicant only under sections 354-A, 506 IPC and section 7/8 of the POCSO Act and even the court below had taken the cognizance of the offence under the said sections and summoned the applicant to face the trial. However, subsequently at the time of framing of charge the applicant was charged for the offence under sections 354-A, 354-B, 376, 511, 506 IPC and section 7/8 of the POCSO Act dated 06.02.2023 and therefore, the order framing charge under the said section is bad in law and is liable to be quashed.

4. Per contra, learned A.G.A. has submitted that from the allegation made in the FIR and the statement of the witnesses recorded under sections 161 and 164 Cr.P.C. specific allegation constituting the offence under sections 354-A, 354-B, 376, 511, 506 IPC and section 7/8 POCSO Act is clearly made out against the applicant and, therefore, there is no illegality in framing the charge under the said sections. The impugned order dated 01.09.2023 is just,

proper and legal. He has further submitted that in view of the laid down by the Apex Court in the case of ***P. Kartikalakshmi Vs. Sri Ganesh and Another, reported in (2017) 3 SCC 347*** the charge under section 216 Cr.P.C. can only be altered by the trial court and no such application for altering the charge can be moved by the applicant as in the instant case and in this view of the matter also, there is no illegality in the order passed by the court below.

5. Having considered the rival submissions made by learned counsel for the parties and taking into consideration the allegation made in the FIR as well as in the statement recorded under section 161 and 164 Cr.P.C. prima facie offence under sections 354-A, 354-B, 376, 511, 506 IPC and section 7/8 POCSO Act is clearly made out against the applicant and the trial court while passing the impugned order has recorded a categorical finding that from allegations made in the FIR as well as the statement of the witnesses recorded under sections 161 and 164 Cr.P.C. offence under sections 354-A, 354-B, 376, 511, 506 IPC and section 7/8 POCSO Act is clearly made out against the applicant. Moreover, the trial court is not bound by the police report submitted by the Investigating Officer and is not merely a post office. It is well settled principle of law that in case at the time of framing of charges, the trial court finds sufficient material available on record for framing charges under the appropriate sections then it is always open for the court to frame necessary charges in which the applicant is to be tried as in the instant case.

6. In the back drop of the aforesaid facts and circumstances, the order dated 06.02.2023 passed by the trial court framing the charges under sections 354-A, 354-B, 376, 511, 506 IPC and section 7/8 POCSO Act is based on the material collected during the course of investigation in the form of statement of the witnesses is just proper and legal and therefore, the consequent impugned order dated 01.09.2023, refusing to alter the charges on the applicant's application can not be quashed.

7. The instant Application U/s 482 Cr.P.C. is, therefore, devoid of merit and is accordingly **dismissed**.

Order Date :- 29.11.2023
RPD