

Court No. - 86

Case :- APPLICATION U/S 482 No. - 41501 of 2023

Applicant :- Rahul @ Prince Gupta

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

Counsel for Applicant :- Pankaj Kumar Rai, Sandeep Maniji Bakhshi

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta, J.

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

2. This application under section under section 482 Cr.P.C. has been filed with a prayer to quash the cognizance order dated 08.09.2023 passed in Criminal Case No. 28247 of 2023 arising out of Case Crime No. 42 of 2023, under sections 366, 328, 342, 376-D, 406, 323, 370 IPC, Police Station Jogiya Udaipur, District Siddhartha Nagar.

3. As per the allegation made in the first information report, it is alleged that on 28.02.2023 in the night hours her daughter had left the house without informing the inmates and in respect of her untraceability information was given in the police station on 03.03.2023, however, on 07.04.2023 in the night, she has returned back and informed that applicant and two others have enticed her away and had forcibly detained her in their house and thereafter taken her to Mumbai from where some how she escaped from their clutches and returned back. On the basis of said information, an FIR was lodged vide Case Crime No. 42 of 2023, under sections 366 IPC.

4. After registration of FIR the police conducted the investigation and recorded the statement of the victim under sections 161 and 164 Cr.P.C. in which it has been categorically stated that the applicant had forcibly taken her away and thereafter committed rape on her. Even in the

statement recorded under section 164 Cr.P.C. said allegation has been reiterated.

5. After concluding the investigation, the police has submitted the chargesheet against the applicant and on the basis of said chargesheet, learned Magistrate has taken cognizance and summoned the applicant to face trial vide order dated 08.09.2023.

6. Being aggrieved and dis-satisfied by the said order 08.09.2023 the present application under section 482 Cr.P.C. has been filed.

7. Learned Counsel for the applicant has submitted that there is vital delay in lodging the first information report and therefore, the entire proceedings based on the charge sheet is wholly illegal based on malafide and as such liable to be quashed.

8. Learned counsel for the applicant has next submitted that in the FIR there is no allegation of committing rape upon the victim, however, subsequently in the statement recorded under sections 161 and 164 Cr.P.C. said allegations of commission of offence of rape have been reiterated just to falsely implicate him and to drag him in criminal case. It is further submitted that the applicant was not present at the time of incident and has been falsely implicated just to wreak vengeance. It is further submitted that medical report does not corroborate the prosecution story, as such entire proceedings may be quashed.

9. Per contra, learned A.G.A. has vehemently opposed the said prayer and has supported the impugned order summoning the applicant to face the trial under sections 366, 328, 342, 376-D, 406, 323, 370 IPC. He has further drawn the attention of the court to the statement of the victim recorded under sections 161 and 164 Cr.P.C. and has submitted that from the allegation made therein prima facie offence under sections 366, 328, 342, 376-D, 406, 323, 370 IPC is clearly disclosed against the applicant and chargesheet as well as entire proceeding can not be quashed. Moreso, when the entire evidence is yet to come.

10. He has further submitted that the plea of alibi taken by the counsel for the applicant at this stage can not be considered. The disputed defence can not be looked into at

this stage as held by the Hon. Apex Court in several of its decisions. Thus, the entire proceedings based on the charge sheet can not be quashed at this stage.

11. Having considered the rival submissions made by the parties and taking into consideration, the allegation made in FIR and material collected during the course of investigation by the police and considering the statements of the victim recorded under sections 161 and 164 Cr.P.C. prima facie offence against the applicant is clearly made out at this stage, as such the entire proceeding can not be quashed. Moreso, when the entire evidence is yet to come.

12. Thus from the perusal of the material available on record and looking into facts of the case at this stage, it can not be said that no offence is made out against the applicant. All the submissions made at the bar relate to the disputed questions of fact, which can not be adjudicated upon by this court under section 482 Cr.P.C.

13. At this stage only prima facie case is to be seen in the light of the law laid down by the Apex court in the case of **R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cr.) 192 and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cr.) 283.**

14. In view of the above, the prayer for quashing the impugned charge sheet, cognizance order as well as the entire proceedings is therefore refused.

15. The present application U/s 482 Cr.P.C. is devoid of merits and is accordingly dismissed.

Order Date :- 15.12.2023

RPD