

Court No. - 92

Case :- APPLICATION U/S 482 No. - 41661 of 2023

Applicant :- Sudama And 3 Others

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

Counsel for Applicant :- Umakant Chaudhary

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Sunil Kumar Srivastava, Advocate holding brief of Sri Umakant Chaudhary, learned counsel for the applicants and Sri Padmakar Rai, the learned AGA appearing for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the charge sheet dated 27.01.2020 as well as cognizance/summoning order dated 08.09.2023 and the entire proceeding of Criminal Case No. 15676 of 2021 (State vs. Sudama and others) arising out of Case Crime No. 379 of 2019 under Sections 323, 504, 308 IPC, P.S.Campairganj, District Gorakhpur, pending in the court of Judicial Magistrate-III, Gorakhpur.

3. Learned counsel for the applicants submits that the instant FIR was lodged against the applicants on the basis of false and fabricated facts due to the property dispute between the parties. Therefore, he has prayed for quashing of the entire proceedings against the applicants. Learned counsel for the applicants further submits that earlier also the applicants herein were summoned vide order dated 10.03.2021, which was quashed by this Court on 11.01.2023 in an Application under Section 482 No. 39053 of 2022 filed by the applicants herein and the matter was remanded back to the Trial Court for passing a fresh order of cognizance / summoning the applicants. In compliance of the aforesaid order, vide order dated 08.09.2023, the learned Magistrate has again took cognizance by speaking order against the applicants, which has been challenged by way of the present application under Section 482 Cr.P.C.

4. Learned AGA for the State submits that in the incident, the victim has sustained grievous injuries including the fracture, which were proved in the medical examination as well as from the statements of the witnesses recorded during investigation. Learned AGA further submits that since it was a property disputed as alleged by the applicants, therefore, the applicants had sufficient motive to cause the incident. Therefore, there is

no ground for interference in the instant case. A prima facie case is made out against the applicants and the learned Magistrate on the basis of material available before him has taken cognizance and summoned the applicants herein for trial. The instant case is pending since 2019.

5. Having heard the rival submissions made by learned counsel for the parties, this Court has carefully perused the record of the case. From the record, it is apparent that on 23.11.2019, an FIR was lodged alleging that the applicants herein had assaulted the opposite party no.2 and her father, in which incident the opposite party no.2 sustained grievous injuries and was referred to Gorakhpur Hospital where he was treated there for a long period. The police after due investigation and after recording statements of various witnesses, has submitted the charge sheet against the applicants. Having found the prima facie case against the applicants, the learned Magistrate vide order dated 08.09.2023 has taken cognizance against the applicants on the basis of the material available before him. The veracity of the allegations are to be tested during the trial of the case.

6. In the considered view of this Court, there is no illegality in the summoning order passed by the learned Magistrate and accordingly, there is no ground for quashing of the proceedings against the applicants. Therefore, the application is devoid of merits and is accordingly **dismissed** in the light of judgments of Apex Court in **R. P. Kapoor Vs. State of Punjab, AIR 1960 S.C. 866; State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] and Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others : 2021 SCC OnLine SC 315.**

Order Date :- 5.12.2023

Ashish Pd.