

Court No. - 91

Case :- APPLICATION U/S 482 No. - 42279 of 2023

Applicant :- Virendra Kumar Tiwari And 2 Others

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

Counsel for Applicant :- Siddharth Niranjana, Sr. Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar, J.

1. Heard learned counsel for the applicants and learned AGA for the State.

2. This application u/s 482 Cr.P.C. has been filed by the applicant with the prayer to quash the order dated 16.06.2022 and charge sheet dated 09.05.2022 as well as the entire proceeding of Case No.1264 of 2022, arising out of N.C.R. no.89 of 2000, under Sections 323, 504 IPC, P.S. Ajitmal, District Auraiya.

3. Submission of learned counsel for the applicants is that initially one N.C.R. has been filed under Sections 323, 504 IPC with the permission under Section 155(2) Cr.P.C. investigation carried out. Further submission is that investigation was concluded and charge sheet under Sections 323, 504 IPC have been filed. The learned Magistrate without considering that case should have been proceeded as a complaint case under Section 2(d) Cr.P.C. has passed order to take cognizance as state case which shows that there has been no application of mind.

4. On the other hand, learned AGA opposed the prayer but admitted the legal position that charge sheet has been filed under Sections 323, 504 IPC, matter should have been proceeded as a complaint case but the order shows otherwise.

5. As the charge sheet has been submitted for the offence under Section 323, 504 IPC, which are non cognizable as per the section 2(d) Cr.P.C., which reads as under:-

"(d) complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report. Explanation.- A report made by a police officer in a case which discloses, after investigation, the commission of a non- cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant"

6. In view of the above, charge sheet should be treated as a complaint case not as a state case but the concerned Magistrate has taken cognizance as stated case.

7. Keeping in view the entire facts and circumstances of the case and the manner in which proceeding carried out by the trial court, it is apparent that the cognizance order is passed without application of mind and against the principles of law, which is not sustainable in the eye of law and the impugned order is set aside with the direction to the court concerned to decide the matter afresh.

8. In view of the such facts, the impugned order dated 16.06.2022 is here by set aside.

9. Accordingly, the instant application stands **disposed off**.

Order Date :- 20.11.2023

Sanjeet