

Court No. - 93

Case :- APPLICATION U/S 482 No. - 42621 of 2023

Applicant :- Pan Kumari And 2 Others

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

Counsel for Applicant :- Devendra Kumar Singh

Counsel for Opposite Party :- G.A.

Hon'ble Manoj Bajaj,J.

1. The applicants are aggrieved against the order dated 31.10.2023 passed by Chief Metropolitan Magistrate-VII, Kanpur Nagar in Complaint Case No. 24862 of 2020 (Mahesh Prasad vs. Pan Kumari and others), under Sections 499 and 500 I.P.C., whereby it has issued non-bailable warrants against the applicants to secure their presence.

2. Learned counsel for the applicants submits that in the complaint instituted by opposite party no. 2 namely, Mahesh Prasad, the process was issued on 2.12.2021 directing the accused persons to appear on 31.1.2022, but the said order was challenged by the accused before this Court, through an application under Section 482 Cr.P.C. bearing no. 24081 of 2022. He next submits that the said petition is pending for adjudication before this Court and vide, order dated 6.9.2022 the proceedings in the complaint case were stayed. He further submits that the interim order is operative and in this regard he has drawn the attention of the Court to the order dated 30.10.2023.

3. According to learned counsel for the applicants on 31.10.2023 when the case was taken up by the trial court, an application was moved by the accused disclosing the status of pendency of the petition before this Court, as well as the continuation of the interim order, but despite that, the Chief Metropolitan Magistrate-VIIth, Kanpur Nagar relying upon the decision by Hon'ble Apex Court in the case of **Asian Resurfacing of Road Agency Pvt., Ltd. and another vs. Central Bureau of Investigation** passed in Criminal Appeal No. 1375-1376 of 2013 proceeded to issue the non-bailable warrant against the accused with the observation that the original interim order is more than six months old, therefore, is not operative. He prays that in the given facts of the case, the impugned order is not sustainable in the eye of law and is liable to be set aside.

4. Upon hearing the learned counsel for the applicants and

considering the submissions, this Court finds that the correctness and validity of the summoning order passed against the applicants is pending before this Court and during pendency of the said petition it was directed that no coercive action shall be taken against the applicants. However, it is evident that in compliance of the order dated 6.9.2022 the Magistrate never insisted for appearance of the accused but proceeded to issue non-bailable warrants solely on the ground that interim order has ceased to exist.

5. Learned counsel for the applicant has produced a copy of order dated 6.9.2022, which is taken on record.

6. A perusal of the order dated 30.10.2023 passed by this Court shows that the interim order was made operative till 11.12.2023 and despite there being an application filed by the applicants intimating the Court about the current status of the petition is pending before this Court, the Magistrate erroneously passed the impugned order. Since the order dated 31.10.2023 is in violation of the interim direction given by this Court, therefore, this Court finds it a fit case to exercise the inherent powers under Section 482 Cr.P.C.

7. Considering the nature of issues and the relief claimed by the applicants in his petition, this Court is not inclined to issue notice to the opposite party no. 2, as it would cause extra burden upon him to contest this petition.

8. In view of the above discussion, the impugned order dated 31.10.2023 passed by the Chief Metropolitan Magistrate-VIIth, Kanpur Nagar is set aside.

9. The petition is allowed.

Order Date :- 22.11.2023

Faridul