Court No. - 86

Case :- APPLICATION U/S 482 No. - 42330 of 2023

Applicant :- Kamlesh Chandra Bhaskar And 5 Others
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Rakesh Kumar Srivastava
Counsel for Opposite Party :- G.A.,Shailendra Kumar Verma

Hon'ble Rajiv Gupta,J.

1. Learned counsel for applicants is present, however, learned counsel for O.P. No.2 is not present.

2. Heard learned counsel for the applicants, learned A.G.A. and perused the record.

3. The present application under Section 482 Cr.P.C. has been filed for quashing the cognizance order dated 18.7.2023 and charge sheet dt. 2.6.2023 alongwith entire criminal proceeding of case no. 1226 of 2023, State Vs. Gautam and others, arising out of case crime no. 78 of 2023, u/s 147, 323, 504, 506, 325, 308 I.P.C., P.S. Khetasarai, District Jaunpur, pending in the court of A.C.J.M-I, Court No.12, Jaunpur.

4. Learned counsel for the applicants has submitted that from the perusal of the allegations made in the FIR and the material collected during the course of investigation, no offence is disclosed against the applicants and the present case has been instituted with a malafide intention for the purpose of harassment. He has pointed out certain documents and statements in support of his contention, as such, entire proceedings be quashed.

5. Per contra, learned AGA has submitted that from the perusal of the allegations made in the FIR and the material collected during the course of investigation, prima facie offence is clearly made out against the applicants and as such, entire proceedings cannot be quashed.

6. From the perusal of the material on record and looking into the facts of the case, at this stage, it cannot be said that no offence is made out against the applicants. All the submissions made at the bar relate to the disputed questions of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C.

7. At this stage, only prima facie case is to be seen in the light of the law laid down by the Supreme Court in the cases 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. The disputed defence of the accused cannot be considered at this stage.

8. Moreover, the applicants had already been directed to be released on bail and they have got right of discharge under Section 239, 245 or 227 Cr.P.C., as the case may be, through a proper application for the said purpose and they are free to take all the submissions in the said discharge application before the trial court.

9. At this stage, this Court is not in a position to weigh the factual matrix of the case properly and accused has a right to file a discharge application before the trial court and the trial court may decide his discharge application, if there is no evidence against them.

10. The prayer for quashing the entire proceedings is therefore refused.

11. However, it is directed that in case the applicants file an application for discharge before the court below, the same be considered and decided expeditiously in accordance with law after hearing the public prosecutor.

12. With the aforesaid directions, this application

under Section 482 Cr.P.C. is finally disposed of.

Order Date :- 16.12.2023

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Digitally signed by :-
RAM ASARE MORYA
High Court of Judicature at Allahabad