Court No. - 92

Case :- APPLICATION U/S 482 No. - 42877 of 2023

Applicant :- Ovais Khan
Opposite Party :- State of U.P. and Another
Counsel for Applicant :- Vikrant Gupta
Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Vikrant Gupta, learned counsel for the applicant and Sri Prashant Saxena, learned AGA for the State. .

2. The instant application has been filed seeking quashing of the charge sheet dated 03.10.2022 as well as the cognizance / summoning order dated 17.04.2023 and the entire proceeding of Case No. 435 of 2023 (State vs. Ovais Khan) arising out of Case Crime No. 274 of 2022, under Sections 337, 354(Ka), 323, 504, 506 IPC, P.S. Ganj, District Rampur, pending before the Additional Chief Judicial Magistrate -Ist, Rampur.

3. Learned counsel for the applicant submits that the instant FIR has been lodged by the opposite party no.2 falsely making the allegations under Section 354-A IPC. It is submitted that in the FIR as well as the statement of opposite party no.2 recorded under Section 161 Cr.P.C. in the instant case. In 161 Cr.P.C. statement of opposite party no.2, there is no averment with regard to to Section 354-A. However in her 164 statement, the opposite party no.2 has made allegations for an offence under Section 354-A IPC, on that basis the investigation was conducted and the charge sheet under Section 337, 354-A, 323, 504, 506 IPC was submitted against the applicant herein, on which vide order dated 17.04.2023, the learned Additional Chief Judicial Magistrate -Ist, Rampur has taken cognizance against the applicant. Learned counsel for the applicant further submits that the son of the opposite party no.2, who is studying in the school in XIth Class had once come to the school on her car and due to which some accident, cycle of another student of the school was damaged. Therefore, the management called the opposite party no.2 and told her that her son will not be allowed to drive vehicle to the school. Due to such enmity, the instant FIR has been lodged against the applicant. Therefore, he has prayed for quashing of the entire proceeding of the instant case against the applicant.

4. Per contra, the learned AGA submits that from the perusal of

the FIR as well as the statement under Section 161 Cr.P.C. not only of the opposite party no.2 but also of the independent witnesses, it cannot be said that no incident at all has taken place. Even the independent witnesses have also supported that there was altercation between them and the applicant had assaulted the opposite party no.2 and her husband. So far as the allegation under Section 354 IPC is concerned, in FIR itself, she has indicated that the applicant was making obscene indications from the car itself and in 164 statement, she has categorically narrated that the applicant has moved his hand on the breast of opposite party no.2. Therefor, categorically the offences alleged are prima facie made out against the applicant on the basis of the material available before the learned Magistrate and vide order dated 17.04.2023, the learned Magistrate has taken cognizance in the mater. It is submitted by the learned AGA that there is no illegality either in the charge sheet or in the summoning order against the applicant. Therefore, he has prayed for dismissal of the instant application filed by the applicant.

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 it is undisputed that an incident dated 30.08.2022 had taken place for which the FIR has been lodged. From the statement of the opposite party no. 2 and the other witnesses, who were examined under Section 161 Cr.P.C. categorically stated that there were some altercation between the parties and it has also been established that the applicant has assaulted the opposite party no.2 and her husband. So far as the allegations under Section 354 are concerned, there are indications of obscene remarks available in the FIR itself and however, there is nothing in the 161 Cr.P.C. statement, but in her statement under Section 164 Cr.P.C., the opposite party no.2 has categorically stated that the applicant has moved his hand on her breast. Therefore, on the combined reading of all the materials available before this Court, prima facie an offence under Sections for which the cognizance has been taken, is made out against the applicant. Therefore, there is no illegality in the charge sheet or the summoning order against the applicant.

6. In view thereof, the instant application is devoid of merit and is hereby **dismissed.**

Order Date :- 7.12.2023
Ashish Pd.

Digitally signed by :-
ASHISH PRASAD
High Court of Judicature at Allahabad