

Court No. - 92

Case :- APPLICATION U/S 482 No. - 42873 of 2023

Applicant :- Mahipal Singh And 7 Others

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

Counsel for Applicant :- Ishwar Chandra Tyagi

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Ishwar Chandra Tyagi, learned counsel for the applicants and Sri Prashant Saxena, learned AGA for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the cognizance/summoning order dated 27.02.2023 passed by the learned Judicial Magistrate, Amroha as well as the order dated 19.10.2023 passed in Criminal Revision No. 113 of 2023 (Mahipal Singh and others vs. State of U.P. and others) by learned Additional Session Judge/Special Judge (POCSO Act), Court NO.3 Amroha and the entire proceeding of Complaint Case No. 2554 of 2022 (Shahid vs. Shaukesh and others) under Sections 148, 149, 323, 504, 452, 506 IPC, P.S. Rajabpur, District Amroha, pending before the learned Judicial Magistrate, Amroha.

3. Learned counsel for the applicants submits that earlier for an incident 03.03.2022, the applicant no.1 and the applicant nos. 5 and 6 had filed two separate complaints against the opposite party no.2 and his family members and subsequent thereto on 15.04.2022, the opposite party no.2 has filed the instant complaint against the applicant alleging some incident dated 03.04.2022. Learned counsel for the applicants further submits that in the complaints filed by the applicant no.1 and the applicant nos. 5 and 6, the opposite party no.2 and his family members were summoned vide orders dated 23.07.2022 and 27.10.2022 respectively and in the instant case, vide order dated 27.02.2023, the applicants have been summoned by the Judicial Magistrate, Amroha for the offences under Sections 148, 149, 323, 504, 452, 506 IPC. Against the said summoning order, the applicants herein have filed a Criminal Revision No. 113 of 2023 before the District and Sessions Judge, Amroha, which was also dismissed vide judgment and order dated 19.10.2023. Therefore, the instant application has been filed by the applicants.

4. Learned counsel for the applicants submits that in the

complaint, the incident has been alleged of 03.04.2022 and in his statement recorded under Section 200 Cr.P.C., the opposite party no.2 has alleged the incident of 04.04.2022. However, the other witnesses who have been examined under Section 202 Cr.P.C. have stated the date of incident to be 03.04.2022. Learned counsel for the applicants further submits that the present complaint has been filed by the opposite party no.2 as a counter blast and no such incident as has been alleged by the opposite party no.2 in his complaint has ever taken place. Learned counsel for the applicants further submits that falsity of the complaint is reflected in the contradictions in the statements under Sections 200 and 202 Cr.P.C. recorded by the Magistrate. Therefore, he has prayed for quashing of the entire proceeding of the instant case.

5. Per contra, learned counsel for the State submits that in the complaint itself it has been stated that after the incident, the police was called by calling on 112, the police came there and took away 3-4 persons, however released them without any action taken against them. Thereafter, the opposite party no.2 had gone to the police station, lodged the FIR, which was not registered nor the medical examination of the opposite party no.2 or his family members was conducted. Thereafter, the opposite party no.2 sent the complaint to the Superintendent of Police by registered post and subsequent thereto, the complaint was filed on 15.04.2022. So far as the error in the date of incident, which has occurred in the statement under Section 200 Cr.P.C. may be a typographical mistake and in the complaint also, the date of incident has been categorically narrated as 03.04.2022. Therefore, the date of incident appears to be a typographical or clerical mistake while recording the statement under Section 200 Cr.P.C. Learned AGA further submits that that since in the instant case, the applicants have approached the Sessions Judge by filing the criminal revision petition and therefore, the present application under Section 482 Cr.P.C. is not maintainable and the alternative remedies are available against the order passed by the Revisional Court. Therefore, learned AGA has prayed for dismissal of the instant application.

6. Having heard the submissions made by learned counsel for the parties, this Court has gone through the record of the case. From the record of the case and the statements recorded under Sections 200 and 202 Cr.P.C., categorical allegations have been made against applicants herein and in the complaint it has also been narrated that immediately at the time of incident itself, police was called by the opposite party no.2 and the police came on the spot and took away some persons. However, under the influence of some other persons, the police released some of the accused persons. Subsequently, the opposite party no.2

approached the police station for registration of FIR, which was not registered and subsequently a complaint was made by the opposite party no.2 to the Superintendent of Police and when no action was taken, he has filed the present complaint against the applicants and the Magistrate, after recording the statements under Sections 200 and 202 Cr.P.C., has found that a prima facie case is made out against the present applicants only. Therefore they have been summoned vide order dated 27.02.2023 and against it, a revision was also dismissed vide judgment and order dated 19.10.2023.

7. In the considered opinion of this Court, there is no illegality in the order passed by the learned Magistrate summoning the applicants otherwise also submitted by learned counsel for the State after the disposal of the revision petition filed by the applicants herein, the remedy lies elsewhere.

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

Order Date :- 7.12.2023

Ashish Pd.