

Court No. - 93

Case :- APPLICATION U/S 482 No. - 43882 of 2023

Applicant :- Mohammad Ahmad Urf Tiger And 4 Others

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

Counsel for Applicant :- Ali Hasan, Istiyaq Ali

Counsel for Opposite Party :- G.A.

Hon'ble Manoj Bajaj, J.

The applicants have filed this petition under Section 482 Code of Criminal Procedure seeking quashing of proceedings of Complaint Case No. 1531 of 2019, titled Wali Husain vs. Mohammad Ahmad and others filed by opposite party no. 2-complainant, under Sections 323, 504, 452, 506 and 427 I.P.C., P.S. Meerganj, district-Bareilly, as well as the summoning order dated 29.9.2021 passed by the Additional Chief Judicial Magistrate, Court no. 5, Bareilly.

Learned counsel for the applicant submits that earlier on the basis of a complaint given by Mohd. Ahmad-applicant no. 1, F.I.R. dated 21.12.2016, bearing Case No. 435 of 2016, under Sections 452, 323, 504 and 427 I.P.C., P.S. Meerganj, district-Bareilly was registered against opposite party no. 2-Wali Hussain (complainant) and three others, namely Salim, Nabi Hussain and Ali Hussain, wherein the chargesheet was submitted against the accused persons on 21.2.2017. According to him in retaliation to the said criminal proceedings initiated by applicant no. 1, the opposite party no. 2 filed the impugned private complaint to falsely implicate the applicants and the court has also passed the impugned summoning order dated 21.9.2021 without recording the satisfaction that the complainant has made out a *prima-facie* case for issuance of process against the accused.

Learned counsel further submits that though the complainant had examined witnesses, namely Zulfekar Ansari as PW1 and Shakeel Ahmad (PW-2) and Ayesha (PW-3) in addition to his own statement recorded under Section 200 Cr.P.C. but the said

material has not been analyzed properly, therefore the impugned summoning order deserves to be set *aside*. In support of his contention, learned counsel has relied upon the decision of Hon'ble Supreme Court in the case of ***State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426***. Learned counsel prays that the impugned complaint and the summoning order is an abuse of process of law, therefore, interference is warranted by this Court.

During the course of hearing, learned counsel was confronted with the maintainability of the petition in view of the alternative remedy of revision as well as long delay in instituting the petition, as the impugned summoning order was passed on 29.9.2021, whereas the petition has been filed after a long delay of more than two years on 25.11.2023.

In response, learned counsel has pointed out that the criminal proceedings initiated by opposite party no. 2 were not within the knowledge of the applicants and they acquired the knowledge only on 9.6.2023 when the police came to the house of the applicants to serve the summons. He further submits that though the order under challenged is revisable but since it is a case where the complainant has failed to make out a *prima-facie* case, therefore, the applicants have chosen to invoke the inherent powers of this Court under Section 482 Code of Criminal Procedure.

After hearing the learned counsel for the applicants and considering his submissions, this Court finds that the impugned complaint instituted by opposite party no. 2 pertains to the alleged commission of offences against human body, mischief, criminal intimidation etc. and the complainant in support of his case examined four witnesses, including himself. As per averments contained in para 11 of this petition, the parties are carrying a strong enmity against each other and civil litigation between them is also pending. The averments in the complaint would show that on 7.10.2019 when he was present in his house, the accused persons at around 7:00 p.m. armed with sticks and *dandas* entered into his house and exhorted that the accused are here to teach a lesson for filing a case on behalf of complainant's wife

against them, which has not been withdrawn and started causing injuries to the complainant, and when his wife intervened, she was also given beatings and even her cloths were torn. Upon hearing the noise the other residents of the colony arrived, whereupon the assailants fled away. The averments contained in the complaint are further supported by the neighbour Shakeel Ahmad, who stated that upon hearing the noise, he reached the house of Ali Hussain and saw that the accused persons not only abused them, but also gave them beatings and damaged the house hold articles. Similar is the statement of Ayesha, wife of Wali Hussain and a perusal of the impugned summoning order also shows that the Magistrate has carefully examined the contents of the complaint as well as the statements of the witnesses and recorded a satisfaction that material on record *prima-faice* suggests the commission of alleged offences while passing the summoning order.

Thus, the facts and circumstances of this case would show that it is not a case where the entire allegations if taken to be true on its face value, no offence is made out, therefore the decision in the case of ***Bhajan Lal (supra)*** would not be applicable in this case. Consequently, this Court does not find it to be a fit case for exercise of inherent powers under Section 482 Code of Criminal Procedure.

Thus, without meaning any expression of opinion on the merits of this case, this application is **dismissed**.

Order Date :- 1.12.2023

Faridul