

Court No. - 93

Case :- APPLICATION U/S 482 No. - 44516 of 2023

Applicant :- Fazil

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

Counsel for Applicant :- Mohd Faiz

Counsel for Opposite Party :- G.A., Santosh Kumar Chaubey

Hon'ble Manoj Bajaj, J.

Applicant- Fazil has filed this application under Section 482 Code of Criminal Procedure seeking quashing of charge sheet dated 15.09.2022 as well as cognizance order dated 07.08.2023 passed by Judicial Magistrate, Baheri, district Bareilly in Case No.2527 of 2023, titled State Vs. Jilani and others, arising out of F.I.R. No.0098 dated 8.4.2022, under Sections 452, 323, 324, 325, 504, 506, 307 I.P.C., Police Station Deoraniya, District Bareilly.

Learned counsel submits that the subject case was registered on the basis of first information report lodged at the instance of complainant- Shamshul Qamar- respondent no.2, who alleged that Jilani s/o Shafi Ahmad is carrying grudge against the complainant's brother, namely, Mohd. Qamar and in this regard on 06.04.2022, Jilani, Shakeel sons of Mohd. Nabi and Azam s/o

Jalil Ahmad came to the house of the complainant's brother and complained to him, that he is speaking bad about them, whereupon, complainant's brother stated that it is not so, and they extended threat to the complainant's brother. When Mohd. Qamar came to the house of complainant on 07.04.2022, complainant asked him as to why he is disturbed, then his brother informed that Jilani, Shakeel and Azam had intimidated him yesterday. On the same day, when Mohd. Qamar and Mohd. Riyaz went to their house at 3.45 p.m., then Jilani, Shakeel, Azam and Fazil abused and attacked Mohd. Qamar with weapons and caused serious head injury. According to learned counsel, In this occurrence he also suffered injuries and upon raising alarm, witnesses Shadab, Mohd. Tarik, Mohd. Suhail and others came there and rescued them.

Learned counsel has argued that the applicant is not attributed any role in the alleged occurrence and dispute, if any, is between Mohd. Qamar and Jilani, therefore, the prosecution of the applicant-Fazil is unjustified. He submits that in respect of the alleged occurrence, a cross case bearing case crime no.113 of 2022 has also been registered on 16.04.2022 at the instance of co-

accused- Shamshul Qamar for alleged commission of offences under Sections 452, 352, 323, 504 IPC. He submits that as per the cross case, the applicant- Fazil is an injured person, who was admitted to hospital on 7.4.2022, therefore, it becomes clear that infact the applicant is a victim, who has been falsely implicated in the impugned first information report by the complainant/opposite party no.2. He prays that the criminal proceedings qua the applicant be quashed.

During the course of hearing, it is not disputed by the learned counsel that in the alleged occurrence both sides have suffered injuries and the cross cases have also been registered against both the parties. Concededly, the impugned final report is pending consideration before the trial court, as the charges against the applicant- accused has not been framed so far.

Upon hearing the learned counsel for applicant and considering the above background, this Court finds that the nature of the offences in both the cases are against the human body and the parties have set up a rival case against each other, relating to the same occurrence, which means they have admitted the occurrence. The respective stand of the parties put forth before

this Court cannot be adjudicated through this application under Section 482 Code of Criminal Procedure, as it would be ascertained by the trial court after examining the evidence that which party was aggressor, therefore, in the given facts, no interference is called for.

Resultantly, without meaning any expression of opinion on the merits of this case, this application is dismissed. However, it shall be open for the applicant to raise all these issues and grounds before the trial court at an appropriate stage during trial.

Order Date :- 13.12.2023/Raj