

Court No. - 89

Case :- APPLICATION U/S 482 No. - 44297 of 2023

Applicant :- Manoj

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

Counsel for Applicant :- Babban Prasad Dwivedi

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma,J.

1. Heard learned counsel for the applicant, learned counsel for the opposite party no.2 and learned AGA for the State.

2. The present 482 Cr.P.C. application has been filed to quash the impugned judgment and order dated 26.10.2023 as well as entire proceedings of Session Trial No.819 of 2020 arising out of Case Crime No.78 of 2020, under Section 319 Cr.P.C.,PS Kamalganj, District Farrukhabad by which application under section 319 Cr.P.C. was allowed for summon the applicant to face trial under sections 307, 302 I.P.C.

3. Learned counsel for the applicant submits that trial court has summoned the applicant on application under section 319 Cr.P.C., summoning of applicant is abuse of process of the Court and is liable to be set aside. Learned counsel for the applicant submits that though applicant was named in the FIR but no charge-sheet was submitted by the Investigating Officer. Thereafter, on statement of P.W.1, P.W.-4 and P.W.-5, trial court has summoned the applicant in the aforesaid sections. He next submitted that during investigation the witnesses of the case has not assigned any role to applicant and on that ground the applicant was not charge-sheeted but on the statement of P.W.-4 and P.W.-5 the applicant has been summoned. Learned trial court without recording satisfaction summoned the applicant for facing the trial. It is well settled principles of law that when there is strong possibilities of conviction only then the summoning order can be passed.

4.From perusal of statement, the applicant involvement in the crime does not appear and trial court without considering the statement recorded during investigation and on placing reliance over deposition of P.W.-4 and P.W.-5 summoned the applicant. Learned counsel for the applicant has placed reliance over the Apex Court judgment in **Periyasami and others vs. S.Nallasamy;2019 Law Suit (SC)790** and has placed reliance

upon Para-5 of the said judgment. The same is being quoted below:-

"On the basis of such FIR, the Investigating Officer recorded the statement of Complainant on 29.05.2011. But none of the appellants in the present appeal were referred to in the said statement. Even in the statements of other witnesses associated during the course of investigation, names of the appellants were not disclosed as the persons who were part of the group, said to have assaulted the complainant and trespassed into his house. After completion of investigation, report under section 173 of the Code was filed against 11 accused on 09.11.2011."

5. Per contra, learned AGA opposed the submission raised by learned counsel for the applicant and submitted that as per as statement of P.W.-4 and P.W.-5, who are injured are giving specific role for causing injury to deceased and injured. From perusal of statement of P.W.-1, P.W.-4 & P.W.-5 involvement of the applicant cannot be denied.

6. Considered the argument raised by learned counsel for the applicant and order dated 26.10.2023. It is evident that learned trial court after considering the deposition of P.W.-1, P.W.-4 and P.W.-5 have summoned the applicant in the aforesaid case, as P.W.-4 and P.W.-5 in their statement have stated that the applicant Manoj was present on the spot holding *Belcha* in her hand. Prima-facie offence against the applicant is made out on perusal of statement of P.W.-4 and P.W.-5. Ingredients for summoning a person under section 319 Cr.P.C. is that from the statement of witnesses recorded during trial, it appears from the evidence that any person not being an accused has committed an offence such person shall be tried together. The application has been moved to summon the applicant as from the statement applicant's involvement cannot be ruled out. If there is any evidence against the person that he was present with the accused with weapons and has been given role of causing injury can be summoned under section 319 Cr.P.C. Trial Court has rightly summon the applicant in the present case. The applicant has been assigned role of holding *Belcha* in his hand and his involvement in the present case cannot be denied. Learned trial court has rightly summoned the applicant in the present case. The order passed by learned trial court is just and proper. No interference is warranted.

7. The present application under Section 482 Cr.P.C. lacks merit and is, accordingly, dismissed.

8. However, if the applicant approach and surrender before the concerned Court below within three weeks from today and in case applies for bail, the bail application shall be decided expeditiously by the courts below in accordance with law.

Order Date :- 5.12.2023/SKD