

Court No. - 93

Case :- APPLICATION U/S 482 No. - 45056 of 2023

Applicant :- Akshay Bhardwaj And Another

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

Counsel for Applicant :- Ajatshatru Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Manoj Bajaj,J.

1. Applicants being accused have approached this Court through this application under Section 482 Code of Criminal Procedure to challenge the order dated 21.11.2023 passed by Additional Chief Judicial Magistrate, Court No.1, Mathura in Case No. 7075 of 2019, titled State Vs. Akshay Bhardwaj and another, arising out of Case Crime No. 1297 of 2017, under Sections 307, 323, 506 I.P.C., Police Station Kotwali, District Mathura, summoning them in relation to the added offence punishable under Section 307 I.P.C.

2. Learned counsel for applicants submits that initially NCR No. 94/2017 dated 28.9.2017 under Sections 323, 506 I.P.C. was registered against the accused at Police Station Kotwali, Chowki Krishna Nagar, Mathura at the instance of complainant namely, Prem Singh, and subsequently, during the pendency of the investigation, the offence punishable under Section 307 I.P.C. was added on 18.12.2017. According to him, the investigation in the alleged crime commenced without the compliance of the mandatory provisions of Section 155(2) Cr.P.C. and on the basis of the opinion given by the doctor relating to the injuries suffered by the victim, a charge sheet bearing No. 803 of 2018 dated 6.8.2018 was filed under Section 173(2) Cr.P.C. against the applicants. He submits that NCR Case No. 94 of 2017, after addition of Section 307 I.P.C. was converted as Case Crime No. 1297 of 2017.

3. Learned counsel for applicants has further pointed out that on the basis of request by the accused made before S.S.P. Mathura, followed by

an order of the Magistrate dated 18.12.2019, further investigation commenced in the above case and the offence punishable under Section 307 I.P.C. was substituted with the offence punishable under Section 308 I.P.C. on 29.10.2020. According to learned counsel, at this stage also, further investigation remained pending, wherein through charge sheet dated 7.12.2020 the offence punishable under Section 307 I.P.C. stood deleted, and the concession of regular bail too was extended to the accused in respect of the remaining offences i.e. Sections 323 and 506 I.P.C.

4. Learned counsel further drew the attention of the Court to the order dated 15.11.2022 and submitted that in the criminal revision no. 386 of 2022 filed by the complainant-opposite party no.2, the order dated 22.4.2022 passed by the Magistrate, summoning the applicants for the offence punishable under Section 323, 506 I.P.C. was set aside and case was remanded back before the Magistrate for deciding it afresh in accordance with law. Learned counsel for applicants submits that now through the impugned order dated 21.11.2023, applicants have been summoned for the alleged commission of offences punishable under Section 307 I.P.C., and he prays for indulgence of this Court on the sole ground that the investigation being in violation of Section 155(2) Cr.P.C. is without jurisdiction, therefore, it deserves to be set aside.

5. During the course of hearing, it is not disputed by learned counsel for applicants that offence punishable under Section 307 I.P.C. was added on 18.12.2017 and thereafter, the investigation had commenced. He fairly states that after submission of final report under Section 173(2) Cr.P.C., further investigation commenced on the request of the accused persons.

6. After hearing the learned counsel for applicants and considering the sole ground pressed in this application to challenge the order dated 21.11.2023, this Court finds that grievance relating to the non compliance of the provisions of Section 155(2) Cr.P.C. ought to have

been raised by the accused when initially the investigation in NCR No. 94 of 2017 commenced in the year 2017. Admittedly, the accused never made any such grievance at that stage and this argument has been raised after addition of Section 307 I.P.C., which is otherwise rendered insignificant in view of the conduct of the accused, who even did not raise this issue when charges against them were framed on 15.6.2022 (Annexure No. 12) for alleged commission of offences punishable under Section 323 and 506 I.P.C.

7. Notably, initially the case was registered as NCR No. 94 of 2017 for alleged commission of offences punishable under Section 323 and 506 I.P.C., but subsequently, the offence punishable under Section 307 I.P.C. was also added and the investigation, if any, before the addition of Section 307 I.P.C. did not result in any miscarriage of justice to the accused, much less any prejudice, therefore, in the given facts, this circumstance alone would not vitiate the investigation as the irregularity, if any, committed by the Investigating Officer stood cured by the Magistrate vide order dated 19.12.2017 permitting the investigation in NCR No. 94 of 2017. Above all, vide order dated 19.12.2017 the Additional Chief Judicial Magistrate, Mathura had passed the order in terms of Section 155(2) Cr.P.C. relating to the investigation in NCR No. 94 of 2017, and the said order was also never challenged by the accused, much less in this application. Thus, this Court does not find any merit in the argument relating to the violation of Section 155(2) Cr.P.C., which has been raised after a long delay, therefore, the same is hereby rejected.

8. Now, while analysing the impugned order dated 21.11.2023, it becomes clear that the Additional Chief Judicial Magistrate, Mathura has specifically observed that as per the first report filed under Section 173(2) Cr.P.C., the offence punishable under Section 307 I.P.C. is made out against the accused, but when cognizance order against the accused was passed solely on the basis of supplementary report under Section 173(8) Cr.P.C. relating to the offences punishable under Section 323, 506

I.P.C., it would not mean that charge regarding Section 307 I.P.C. contained in the first report stood rejected, as there is no such order passed by the court. Consequently, the court proceeded to summon the accused for the alleged commission of offence punishable under Section 307 I.P.C. also. A reading of the impugned order would show that the same is based upon correct appreciation of law, and if, there are conflicting reports submitted by police in a case, the court of competent jurisdiction is to examine both the reports to arrive at a just conclusion. In this regard, a reference can be made by Hon'ble Supreme Court in *Vinay Tyagi v. Irshad Ali @ Deepak and others, 2013 (5) SCC 762.*

9. No other argument has been raised by the learned counsel for the applicants.

10. Resultantly, this Court does not find any convincing ground to exercise the inherent powers under Section 482 Cr.P.C. The application is accordingly, dismissed.

(Manoj Bajaj, J.)

Order Date :- 11.12.2023
P.S.Parihar