**Court No. - 89**

**Case :-** APPLICATION U/S 482 No. - 45808 of 2023

**Applicant :-** Mubarak Ali And 3 Others
**Opposite Party :-** State of U.P. and Another
**Counsel for Applicant :-** Subhash Chander Dwivedi
**Counsel for Opposite Party :-** G.A.

**Hon'ble Deepak Verma,J.**

1. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the material available on record.

2. This application under Section 482 Cr.P.C. has been filed with the prayer to quash the summoning order dated 19.05.2023 as well as entire proceedings of Criminal Case No.104557 of 2023 (State Vs. Mubarak Ali and Others) Crime No. 540 of 2022, under Sections 323, 506 I.P.C., P.S. Chakeri, District Purvi (Commissionarate Kanpur Nagar).

3. Learned counsel for the applicants has submitted that charged section is non-cognizable section and the learned Magistrate may pass an order taking cognizance, if he so desires, by proceeding under Chapter XV of the Code of Criminal Procedure. Reliance has been placed to Explanation 2(d) of the Code of Criminal Procedure, which reads as follows:-

*"Explanation-- A report made by a police officer in a case which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint, and the police officer by whom such report is made shall be deemed to be the complainant."*

4. Learned A.G.A. has stated that no useful purpose would be served in issuing notice to the opposite party no.2 as it will only delay the proceedings of the present case.

5. Therefore, on the basis of aforesaid Explanation, which has been interpreted by Co-ordinate Bench of this Court in Application u/s 482 No. 45609 of 2018 (Santosh Kumar and 2 others vs. State of U.P. and others) decided on 31.1.2019, wherein it has been held that when the charge-sheet is only of non-cognizable offence, in view of the aforesaid provision, the charge sheet should be treated

as a complaint.

6. The argument of learned counsel for the applicant is well founded and the order taking cognizance is set aside. Now, the Magistrate may pass an order taking cognizance, if he so chooses, by proceeding in this matter as a complaint case under Chapter XV of the Code of Criminal Procedure. He can also keep in mind Proviso(a) to Section 200 Cr.P.C., which reads as follows:-

*"Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses."*

*(a) If a public servant acting or purporting to act in discharge of his official duties or a Court has made the complaint;"*

7. With these observations, this application under Section 482 CrPC is finally disposed of.

**Order Date :-** 15.12.2023
Meenu Singh

Digitally signed by :-
MEENU SINGH
High Court of Judicature at Allahabad