

Court No. - 12

Case :- APPLICATION U/S 482 No. - 359 of 2019

Applicant :- S.I. Rakesh Kumar

Opposite Party :- State Of U.P. And Anr.

Counsel for Applicant :- Anand Prakash Pandey, Nilesh Singh

Counsel for Opposite Party :- G.A., Abdul Rafey Siddiqui, Rehan Ahmad Siddiqui

Hon'ble Rajeev Singh, J.

1. Heard learned counsel for the applicant, learned A.G.A. and perused the record. No one has put in appearance on behalf of private respondent.

2. Present petition/application is filed with the following prayer:-

"to quash the entire criminal proceeding of criminal complaint No. 3623/2017 Under section 341/504/379 IPC, P.S.- Tarun, District- Faizabad filed in the court of the Additional Chief Judicial Magistrate- Third, Faizabad."

3. Learned counsel for the applicant submitted that as per the prosecution case the applicant was deployed on duty; being a police officer and during the course of vehicle checking, he asked the documents from the private respondent but he felt offended and left the vehicle, thereafter, the vehicle was taken into custody as un-claimed vehicle, and on the next date, he came to the Police Station concerned and vehicle was taken back by him. He further submitted that due to annoyance, the complaint of case in question was filed and after recording the statements under Section 200 and 202 Cr.P.C., summoning order was passed by the learned trial court without considering the provisions of Section 197 Cr.P.C. as it was obligatory on the part of trial court to consider the sanction order before taking cognizance, therefore impugned proceedings is liable to be set aside. It is, thus, submitted that indulgence of this Court is required.

4. Learned A.G.A. opposed the prayer of the applicant but he does not dispute this fact that the applicant was on duty and the sanction order should be taken into consideration before taking cognizance of Section 197 Cr.P.C.

5. Considering submission of rival parties and going through

the contents of petition as well as other relevant documents; it is undisputed fact that the applicant was on duty and the vehicle of private respondent was taken into custody as an unclaimed vehicle, and thereafter, complaint of the case in question was filed and summoning order was passed by the learned trial court without considering the provisions of Section 197 of Cr.P.C. As no sanction order is discussed in the impugned order, therefore, this Court is of the view that without consideration of the said sanction order, prosecution of police officials is not permissible.

6. In view of above, the present application is **allowed** and the summoning order as well as the impugned proceedings are hereby **set aside**.

Order Date :- 7.11.2023

Vipul