Court No. - 12

Case :- APPLICATION U/S 482 No. - 6513 of 2013
Applicant :- Manoj Kumar
Opposite Party :- The State Of U.P And Anr.
Counsel for Applicant :- Hemant Kumar Misra,Arti Ganguly
Counsel for Opposite Party :- Govt. Advocate

Hon'ble Rajeev Singh,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

2. Present application has been moved by the applicant for quashing the order dated 26.10.2013 passed on the protest application viz a viz criminal proceedings of Criminal Case No.1469/2023, State Vs. Yogesh Tyagi and Anr. arising out of Case Crime No.493 of 2011 under Sections 406 and 409 I.P.C., P.S.- Tadiyawa, District Hardoi.

3. Learned counsel for the applicant submitted that the applicant was working as an Assistant Teacher in Primary Pathshala, Seetalganj, District Hardoi and some construction work was done under the supervision of the technical department of Rural Engineering Services and certain flaws were found in the construction work which was done in the year of 2004-05, thereafter, F.I.R. of case in question was lodged by Shri Nawab Verma, Block Education Officer in the year of 2011 as F.I.R. No.493 of 2011 under Section 406 and 409 of I.P.C. against the applicant and one Yogesh Tyagi, thereafter, final report was submitted by the Investigating Officer on the basis of several reports of the engineering department, thereafter, the protest petition was filed by the private respondent and summoning order was passed by the trial court with the observation that the final report was submitted with the collusion of the accused persons only with the intention to facilitate them. He further submitted that the summoning order was passed merely on the basis of presumption.

4. Learned counsel for the applicant relied on the decision of Hon'ble Apex Court in the case of ***State of Haryana Vs. Bhajan Lal*** reported in ***1992 Supp (1) SCC 335*** as well as on the decision of this Court in the case of ***Mujammil Khan and Ors. Vs. State of U.P. and Anr.*** in ***Case U/S No.482/378/407 No.161/2010*** and submitted that it is a case of no evidence. He further submitted that the legal provisions under Section 191B of Cr.P.C. are not disputed, in which, the summoning order can

be passed by the trial court but there must be a reasonable satisfaction, therefore, kind indulgence of this Court is necessary.

5. Learned A.G.A. opposed the prayer of applicant and submitted that there is no illegality in the order passed by the trial court but he does not dispute this fact that after investigation, charge sheet was submitted. He further conceded this fact that there are guidelines for monitoring of the construction work as the applicant was an Assistant Teacher in the primary school and he is not a technical expert.

6. Considering the submissions of learned counsel for the parties, going through the contents of application, as well as other relevant documents, as it is evident from the record that the construction work is related to the year of 2004-05 and the F.I.R. of the case in question was lodged in the year of 2014 by the Block Education Officer who was the member of the then technical team, as the final report was submitted by the Investigating Officer after considering the guidelines of the monitoring of construction work as well as evidences available on record but merely on the basis of presumption that only with the intention to give benefit to the accused persons, final report was submitted, is not a satisfactory gourd for passing the impugned order, therefore, this Court is of the view that the impugned order has been passed merely on the basis of presumption.

7. Accordingly, the application is **allowed** and order 26.10.2013 passed on the protest application viz a viz criminal proceedings of Criminal Case No.1469/2023, State Vs. Yogesh Tyagi and Anr. arising out of Case Crime No.493 of 2011 under Sections 406 and 409 I.P.C., P.S.- Tadiyawa, District Hardoi is hereby **set aside.**

Order Date :- 5.12.2023
V. Sinha

Digitally signed by :-
VAISHALI SINHA
High Court of Judicature at Allahabad,
Lucknow Bench