

Court No. - 15

Case :- CRIMINAL APPEAL No. - 1553 of 2022

Appellant :- Dinesh Kumar

Respondent :- State Of U.P. Thru. Prin. Secy. Home, Deptt. Lko. And Another

Counsel for Appellant :- Arvind Kumar Verma

Counsel for Respondent :- G.A.,Rajiv Raman Srivastava

Hon'ble Shamim Ahmed,J.

Learned A.G.A. has filed a counter affidavit has been filed, which is taken on record.

Heard Shri Arvind Kumar Verma, learned counsel for the appellant as well as learned A.G.A. for the State and the learned counsel for the opposite party No. 2 and perused the record.

The instant Criminal Appeal under Section 14-A(1) of the S.C./S.T. Act has been moved on behalf of the appellant-Dinesh Kumar with a prayer to quash the impugned summoning order dated 28.04.2022 passed by Special Judge (S.C./S.T. Act), Sitapur, in Special Trial No. 167 of 2022 as well as charge sheet dated 18.02.2022, arising out of Case Crime No. 564 of 2021, under Section 376, I.P.C. and Section 3(2)(v), S.C./S.T. Act, Police Station Kotwali, District Sitapur.

The contention of the learned counsel for the appellant is that no offence against the appellant is disclosed and the present prosecution has been instituted with a *mala fide* intention for the purposes of harassment.

Per contra, the learned AGA has contended that from the allegations made in the FIR, *prima facie* offence is made out against the appellant. The innocence of the appellant cannot be adjudged at the pre-trial stage. Therefore, the appellant does not deserve any indulgence.

From the perusal of the materials on record and looking into the facts of the case and after considering the arguments made at the bar, it does not appear that no offence has been made out against the appellant.

At the stage of issuing process the court below is not expected to examine and assess in detail the material placed on record, only this has to be seen whether *prima facie* cognizable offence is disclosed or not. The Apex Court has also laid down the guidelines where the criminal proceedings could be interfered

and quashed in exercise of its power by the High Court in the following cases:-(i) **R.P. Kapoor Vs. State of Punjab, AIR 1960 S.C. 866**, (ii) **State of Haryana Vs. Bhajanlal, 1992 SCC (Crl.)426**, (iii) **State of Bihar Vs. P.P. Sharma, 1992 SCC (Crl.)192** and (iv) **Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.)283**.

From the aforesaid decisions the Apex Court has settled the legal position for quashing of the proceedings at the initial stage. The test to be applied by the court is to whether uncontroverted allegation as made *prima facie* establishes the offence and the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing criminal proceedings to be continue. In **S.W. Palankattkar & others Vs. State of Bihar, 2002 (44) ACC 168**, it has been held by the Hon'ble Apex Court that quashing of the criminal proceedings is an exception than a rule.

The High Court would not embark upon an inquiry as it is the function of the Trial Judge/Court. The interference at the threshold of quashing of the charge sheet/criminal proceedings in case in hand cannot be said to be exceptional as it discloses *prima facie* commission of an offence. In the result, the prayer made for quashing is refused. The appellant has ample opportunity to raise all the objections at the appropriate stage. With these observations the instant appeal is **dismissed**.

(Shamim Ahmed, J.)

Order Date :- 10.10.2023

A.Nigam