Court No. - 15
Case :- CRIMINAL APPEAL No. - 1856 of 2021
Appellant :- Tung Nath Dubey And 4 Ors.
Respondent :- State Of U.P. And Anr.
Counsel for Appellant :- Vivek Kumar Srivastava,Pradeep Kumar Srivastava
Counsel for Respondent :- G.A.,Saima Khan

Hon'ble Shamim Ahmed,J.

Heard Sri Pradeep Kumar Srivastava, learned counsel for the appellants as well as learned A.G.A. for the State and perused the record.

The instant appeal has been filed by the appellants, namely, Tung Nath Dubey, Hitkaran Dubey, Raj Naraya, Prem Nath and Rajesh Kumar with a prayer to set aside the Charge Sheet No.1 of 2020 dated 25.08.2020, Crime No.0184 of 2020, under Sections 147, 188, 323, 504, 506 I.P.C. and Section 3(1)(Da, Dha) of S.C./S.T. Act, Police Station Dhanepur, District Gonda, pending before the learned Additional Sessions Judge / Special Judge, S.C./S.T. Act, Gonda as well as summoning order dated 10.08.2021 passed in Sessions Case No.635 of 2021 and to set aside the entire criminal proceedings in pursuance thereof.

Learned Counsel for the appellants submits that the appellants are reputed persons in the society and they have been falsely implicated in the present case due village party rivalry. He further submits that the impugned summoning order passed by the court below is totally arbitrary and illegal and the same has been passed without considering the material evidence available on record and the cognizance has been taken by the court below in a routine manner on the charge sheet, which is also prepared without considering the material facts available on record, thus, he submits that entire criminal proceedings initiated against the appellants may be quashed and the present appeal may be allowed.

Learned Counsel for the appellants also prays for permission to appear through counsel before the concerned lower court within a period of three weeks from today and move an application claiming discharge on behalf of the appellants and this Court may direct the court below to decide the application so moved by the appellants.

Learned A.G.A. has disputed the aforesaid contentions made by learned Counsel for the appellants but he has not opposed the request made by learned Counsel for the appellants to move a

discharge application before the court below through counsel.

All the contentions raised by the appellants' counsel relate to disputed questions of fact. The court has also been called upon to adjudge the testimonial worth of prosecution evidence and evaluate the same on the basis of various intricacies of factual details which have been touched upon by learned counsel. The veracity and credibility of material furnished on behalf of the prosecution has been questioned and false implication has been pleaded. In the process of invoking its inherent jurisdiction, this court cannot be persuaded to have a pre trial before the actual trial begins. The submissions made by the learned counsel call for adjudication on pure questions of fact which may be adequately adjudicated upon only by the trial court and while doing so even the submissions made on points of law can also be more appropriately gone into by the trial court in this case.

The quashing of the charge sheet and the entire proceedings can also be done only if it does not disclose any offence or if there is any legal bar which prohibits the proceedings on its basis. The Apex Court decisions in the case of **R.P. Kapur Vs. State of Punjab AIR 1960 SC 866, State of Haryana Vs. Bhajan Lal 1992 SCC(Cr.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cri.) 192** and also in **Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.) 283** make the position of law in this regard clear.

In the absence of any of the grounds recognized by the Apex Court which might justify the quashing of charge sheet, summoning order or the impugned proceedings, the prayer for quashing the same is refused as I do not see any abuse of the courts process either. The court below has been vested with sufficient powers to discharge the accused even before the stage to frame the charges comes, if for reasons to be recorded it considers the charge to be groundless.

As requested by learned Counsel for the appellants, the permission to appear through counsel before the concerned lower court within a period of three weeks from today and move an application claiming discharge on behalf of whom this appeal has been moved, is granted. The concerned court shall after hearing the counsel decide the application on merits in accordance with law within a period which shall not exceed a period of two months from today.

With the above observations, this appeal stands **disposed of**.

Order Date :- 6.12.2023
Saurabh

Digitally signed by :-
SAURABH VERMA
High Court of Judicature at Allahabad,
Lucknow Bench