

Court No. - 12

Case :- APPLICATION U/S 482 No. - 6602 of 2023

Applicant :- Vakeel Ahamad

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.
And Another

Counsel for Applicant :- Vishnu Kumar Srivastava, Umesh
Chandra Srivastava

Counsel for Opposite Party :- G.A., Anamika Singh, Paritosh
Shukla

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 summoning order dated 08.02.2023 passed by Additional Civil Judge, Junior Division/Judicial Magistrate, Room No.15, Pratapgarh in Case No.3942 of 2023 under Sections 504, 323, 506, 354Ka, 376 I.P.C. and charge sheet dated 14.11.2022 in Case Crime No.233 of 2022 U/S 504, 323, 506, 354Ka I.P.C. P.S. Jethwara, District- Pratapgarh.
3. Learned counsel for the applicant submitted that the charge sheet was filed by the Investigating Officer for the offence under Sections 504, 323, 506, 354Ka I.P.C. but the trial court passed summoning order under Sections 504, 323, 506, 354Ka, 376 I.P.C. He further relied on the decision of Hon'ble Apex Court in the case of ***State of Gujarat Vs. Girish Radhakrishnan Varde*** reported in ***(2014) 3 SCC 659*** and submitted that at the time of taking cognizance, it was obligatory on the part of trial court to issue cognizance order as well as summon for the offence for which police report was submitted, therefore, kind indulgence of this Court is necessary.
4. Learned A.G.A. opposed the prayer of applicant and but he does not dispute this fact that the charge sheet was filed for the offence under Sections 504, 323, 506, 354Ka I.P.C. against the applicant but the cognizance was taken for the offence under Sections 504, 323, 506, 354Ka, 376 I.P.C. in which charge sheet was not filed.
5. Considering the submissions of learned counsel for the parties, going through the contents of application, statement of victim recorded under Section 164 Cr.P.C. and the law relied upon by learned counsel for the applicant, as well as other

relevant documents, as it is evident that at the time of taking cognizance and issuing summon, it is obligatory on the part of trial court to take cognizance for the offence, in which, charge sheet/police report is submitted by the Investigating Officer, as no charge sheet was filed under Section 376 I.P.C. against the applicant, therefore, this Court is of the view that cognizance order was passed by the trial court without application of mind and is liable to be set aside.

6. Accordingly, the application is allowed and the summoning order dated 08.02.2023 passed by Additional Civil Judge, Junior Division/Judicial Magistrate, Room No.15, Pratapgarh in Case No.3942 of 2023 under Sections 504, 323, 506, 354Ka, 376 I.P.C. is hereby set aside.

7. Trial court is directed to pass a fresh order on the police report dated 14.11.2022 in Case Crime No.233 of 2022 U/S 504, 323, 506, 354Ka I.P.C. P.S. Jethwara, District- Pratapgarh within a period of one month from today.

Order Date :- 28.11.2023

V. Sinha