

Court No. - 28

Case :- APPLICATION U/S 482 No. - 9728 of 2023

Applicant :- Ritesh Yadav @ Babuwa Thru. Father Shri Shivram Yadav

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

Counsel for Applicant :- Swatantra Lata Yadav, Sandeep Kumar Rawat

Counsel for Opposite Party :- G.A.

Hon'ble Shree Prakash Singh, J.

Heard Ms. Swatantra Lata Yadav, learned counsel for the applicant, Sri Aniruddh Kumar Singh, learned A.G.A.-I for the State and perused the material placed on record.

Instant application has been filed with the prayer to quash the summoning order dated 5.1.2023 issued by the Chief Judicial Magistrate, Lucknow in Complaint No.2810 of 2020 (Shatrohan Yadav Vs. Shivram Yadav & others) under Sections 323, 504, 506 I.P.C. pending in the court of Chief Judicial Magistrate, Lucknow and also to quash the entire proceedings arising out of aforementioned criminal complaint.

Learned counsel for the applicant submits that a complaint has been instituted by the opposite party no.2 and, thereafter, the statements under Section 200 and 202 Cr.P.C. were recorded but without the list of the prosecution witnesses being produced/submitted by the prosecution, the summons have been issued, which is erroneous as per the mandate of Section 204 of Cr.P.C. He has further drawn attention of this Court towards the summoning order dated 5.1.2023, passed by the trial court and added that from the order itself, it is evident that after issuance of summons, the complainant was directed to submit list of the witnesses and, thus, the impugned order dated 5.1.2023 is unsustainable. Therefore, submission is that the summoning order dated 5.1.2023 may be set aside.

On the other hand, learned A.G.A. for the State has opposed the contentions aforesaid and submits that the learned trial court has rightly passed the order after considering the statement of the complainant as well as the witnesses under Section 200 and 202 Cr.P.C. respectively and reasoned order has been passed while issuing summons and, therefore, no interference is warranted.

Having heard learned counsel for the parties and after perusal of the record, it transpires that a complaint was filed by the opposite party no.2 whereafter statements of the complainant and witnesses were recorded and the order was passed on 5.1.2023 whereby the summons were issued and the complainant was directed to submit list of witnesses within 15 days.

When this Court examines the order dated 5.1.2023 in the light of the provision of Section 204 (2) of the Cr.P.C. it provides that no summon or warrant shall be issued against the accused under Section 1 until the list of witnesses of prosecution has been filed. So far as the case in hand is concerned, it reveals from the order itself that the summon has been issued on 5.1.2023 and while issuing the summon, the complainant was directed to submit list of witnesses within fifteen days which is apparently at subsequent stage and as such the same is erroneous.

In view of the aforesaid, the order dated 5.1.2023 passed by the trial court is hereby set aside.

The matter is remitted back to the trial court concerned to pass fresh order considering the provisions of Section 204 of Cr.P.C., within a period of 45 days from the date of presentation of certified copy of this order.

Instant application is hereby allowed in aforesaid terms.

Order Date :- 16.10.2023

Ram Murti