

Court No. - 12

Case :- APPLICATION U/S 482 No. - 9836 of 2023

Applicant :- Mahesh Gupta Alias Guru And 2 Others

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home, Lucknow And Another

Counsel for Applicant :- Anand Mani Tripathi, Amit Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh, J.

1. Vakalatnama filed by Sri Punit Kumar Shukla, learned counsel for the private respondent is taken on record.
2. Heard Sri A.M. Tripathi, Advocate assisted by Sri Anurag Tripathi, learned counsel for the applicants, Sri Punit Kumar Shukla, learned counsel for the private respondent and Sri Jaskaran Lal Maurya, learned A.G.A. for the State.
3. The present application under Section 482 Cr.P.C. is filed with the prayer to quash the proceeding of Complaint Case No.2106 of 2022, "*Kanhaiya Lal Gupta Vs. Mahesh Gupta and Ors.*" under Section 406, 506 I.P.C., Police Station Mishrikh, District Sitapur.
4. Learned counsel for the applicant submits that it is admitted case of the prosecution that there is a dispute in between private respondent & applicant and only with the intention to make pressure on the applicants earlier one complaint was filed under Section 156(3) Cr.P.C., which was registered as Crl. Misc. Case No.433 of 2021 in the court of C.J.M., Sitapur and the report was called from the concerned police station and thereafter, the said application was rejected by C.J.M., Sitapur on 27.9.2021. He further submits that thereafter, another complaint dated 12.11.2021 was filed before the A.C.J.M.-I, Sitapur with the allegation that money of the private respondent is not being refunded by the applicants and report was sought

and later on, the said application was treated as a complaint case. He further submits that after recording the statement under Section 200 and 202 Cr.P.C., summoning order was passed by learned C.J.M. Sitapur on 8.5.2023 in the most mechanical manner and he drew attention of the court on para no. 2 of the impugned order passed by C.J.M., Sitapur and submits that all these facts have no relevancy with the present case. He further submits that thereafter, revision was filed which was also rejected by the revisional court without considering this fact that learned Chief Judicial Magistrate passed the order dated 8.5.2023 without application of mind by mentioning facts of some other case, therefore, indulgence of this Court is necessary.

5. Learned A.G.A. opposed the prayer of the applicant and submits that applicant may appear before the court below and apprise all these facts at appropriate stage, but they do not dispute this fact that impugned summoning order was passed by mentioning the facts of some other case, therefore, present application is liable to be dismissed.

6. Considering the submissions of learned counsel for the parties, going through the contents of the impugned order passed by the Chief Judicial Magistrate, Sitapur as well as revisional order, it is evident from the impugned order passed by the Chief Judicial Magistrate that facts in para-2 of the order are of some different case, which is a result of cut-paste, therefore, it is evident that at the time of passing impugned order, learned A.C.J.M. has not applied its mind and the facts of some other case have been mentioned, therefore, order dated 8.5.2023 as well as revisional court are hereby set aside with the observation that C.J.M. Sitapur may pass a fresh order, in accordance with the law.

7. In view of the above, the present application under Section 482 Cr.P.C. is **allowed**.

Order Date :- 10.10.2023

Gaurav/-