

Court No. - 12

Case :- APPLICATION U/S 482 No. - 9849 of 2023

Applicant :- Rajesh Kumar And Others

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt.,
U.P. Govt. Lko. Another

Counsel for Applicant :- Mohd. Waris Farooqui

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh,J.

1. Heard learned counsel for the applicants as well as learned A.G.A. for the State and perused the record.
2. The present application has been filed for quashing the impugned order dated 01.08.2023 passed by learned Chief Judicial Magistrate, Balrampur in Complaint Case No.673 of 2015 U/s 149, 323, 419, 420, 467, 468, 471, 504, 506 I.P.C., Police Station- Kotwali Nagar, District- Balrampur.
3. Learned counsel for the applicants submits that the controversy in question is completely a civil dispute, therefore, the criminal prosecution cannot be initiated.
4. Relying on the decision of Hon'ble Apex Court in the case of ***Govind Prasad Kejriwal vs. State of Bihar and another*** reported in ***(2020) 16 SCC 714***, learned counsel for the applicants further submits that in a complaint case, learned Magistrate is under obligation to consider the entire facts at the time of taking cognizance and, in case, the prosecution is related to civil dispute then the criminal proceeding should not be initiated but learned trial court accepted the defense of applicant even then rejected the discharge application.
5. Further relying on the decision of Hon'ble Apex Court in the case of ***Gulam Mustafa vs. State of Karnataka and another*** reported in ***(2023) SCC OnLine SC 603***, learned counsel for the applicants submits that the aforesaid analogy was considered again by Hon'ble Apex Court. It is, thus, submitted that indulgence of this Court is necessary.
6. Learned A.G.A. vehemently opposes the prayer of applicants and submits that summoning order dated 03.07.2015 passed by learned Judicial Magistrate-II, Balrampur as well as the order dated 11.07.2017 passed by learned Additional Sessions Judge/F.T.C. No.1, Balrampur including the proceeding of

aforesaid complaint case was challenged before this Court in Application U/s 482 Cr.P.C. 5006 of 2017; the said application/petition was disposed of vide order dated 07.12.2022 with the direction that in case, applicants move any discharge application before trial court then the same shall be considered and decided in accordance with law. In pursuance of direction of this Court vide order dated 07.12.2022 in the aforementioned petition/application, the discharge application was decided by learned trial court with the observation that at the time of taking cognizance in a complaint case, only contents of complaint as well as statements recorded U/s 200 & 202 Cr.P.C. are to be examined but defense of accused persons cannot be considered. It is, thus, submitted that all these defense can be raised at the appropriate stage therefore, there is no illegality in the order passed by learned Chief Judicial Magistrate, Balrampur.

7. Considering the submissions of learned counsel for the applicants, learned A.G.A. and going through the contents of application as well as other relevant documents; it is evident that summoning order as well as proceeding of complaint case was challenged before this Court in aforementioned petition/application and the same was disposed of with the observation that in case, any discharge application is moved then the same shall be considered and decided in accordance with law. It is further evident from the record that learned trial court has rightly observed that at the time of passing the summoning order, only contents of complaint as well as statement recorded U/s 200 & 202 Cr.P.C. are to be examined and all these defense can be raised at appropriate stage. It is well settled by Hon'ble Apex Court in the case of **C.B.I. vs. Aryan Singh** reported in **2023 SCC OnLine SC 379** that U/s 482 Cr.P.C., mini trial at the stage of discharge and quashing of criminal proceeding is not permissible. In such circumstances, this Court is of the view that the decisions of Hon'ble Apex Court relied by learned counsel for the applicants are not applicable at this stage.

8. With the above observations, the present application U/s 482 Cr.P.C. is **dismissed**.

Order Date :- 12.10.2023

Arpan