

Court No. - 12

Case :- APPLICATION U/S 482 No. - 10099 of 2023

Applicant :- Ram Sajivan Dubey @ Ram Sajivan Dwivedi And 3 Others

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

Counsel for Applicant :- Shri Narayan Pandey, Rakesh Kumar Modanwal

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh, J.

1. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the record.

2. The present application under Section 482 Cr.P.C. has been filed for quashing the charge sheet dated 14/15.06.2023 as well as cognizance order dated 16.08.2023 arising out of NCR No. 124 of 2022, under Sections 323 and 504 I.P.C., P.S. Jethwara, District Pratapgarh and its entire proceedings.

3. Learned counsel for the applicants submits that opposite party no. 2 has registered the NCR No. 124 of 2022 (supra), in which, the police has filed charge sheet under Sections 323 and 504 I.P.C., which are related to non cognizable offence, therefore, according to Section 2(d) of Cr.P.C., police report should be treated as complaint case, but the court below has wrongly taken cognizance on the charge sheet and issued summons to the applicants, which is contrary to Section 2(d) Cr.P.C.

4. Learned counsel for the applicants submits that the offences under Sections 323 and 504 I.P.C. are non-cognizable, hence, in view of the Explanation to Section 2 (d) of the Code of Criminal Procedure, the case could not proceed as State Case and it had to proceed as a complaint case. It is lastly submitted that indisputably, the offences under Sections 323 and 504 I.P.C. are non-cognizable.

5. Explanation to Section 2 (d) of the Cr. P. C. runs as under:

Explanation - A report made by a police officer in a case

which discloses, after investigation the commission of a non-cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.

6. In view of the said Explanation, report of the police officer, after investigation disclosing commission of non-cognizable offence, is to be deemed to be a complaint and the police officer who submitted the report has to be deemed to be a complainant. In other words, the charge-sheet submitted by the police in a non-cognizable offence shall be treated to be a complaint and the procedure prescribed for hearing of complaint case shall be applicable to that case. However, in the present case, from the material brought on record, it transpires that on the charge-sheet submitted by the Investigating Officer, instead of being treated as a complaint, the court below has taken cognizance on the same treating it to be as a State Case, which is not permissible under law.

7. Learned A.G.A. does not dispute the aforesaid legal argument advanced by the learned counsel for the applicant.

8. After having considered the submissions made by learned counsel for the parties and perused the material on record as well as the impugned summoning order and examined the relevant provisions of the Code of Criminal Procedure, I am of the view that the submissions made by learned counsel for the applicants have force and are liable to be accepted.

9. For the aforesaid reasons, the charge sheet dated 14/15.06.2023 as well as cognizance order dated 16.08.2023 arising out of NCR No. 124 of 2022, under Sections 323 and 504 I.P.C., P.S. Jethwara, District Pratapgarh are hereby quashed.

10. The application, accordingly, stands disposed of.

11. However, it is made clear that the case shall be treated

to be a complaint case and the procedure prescribed for hearing of the complaint shall be followed by the court concerned before summoning the applicant.

Order Date :- 16.10.2023

VKS