

Court No. - 29

Case :- CRIMINAL APPEAL No. - 3034 of 2023

Appellant :- Rajesh Yadav

Respondent :- State Of U.P. Thru. Prin. Secy. Home, Lko And Another

Counsel for Appellant :- Vinod Kumar Pandey, Pragati Singh

Counsel for Respondent :- G.A.

Hon'ble Mrs. Renu Agarwal, J.

Heard learned counsel for the appellant, learned AGA for the State and perused the record.

The present appeal has been filed by the appellant with prayer to set-aside the summoning order dated 04.09.2023 passed by the Additional Session Judge/Special Judge, SC/ST Act, Gonda, in Session Case No.1230 of 2023(State Vs. Durga Prasad Patel and others), arising out of Case Crime 0189 of 2023, under sections 147, 385, 353, 332, 504, 506, IPC and section 3(1)d, dha of SC/ST Act and section 7 Criminal Law Amendment Act, Police Station Chhhapia, District Gonda and also set-aside the charge sheet dated 30.07.2023.

Learned counsel for the applicant submitted that impugned FIR has been lodged against three named and some unknown persons. Entire allegation are levelled against the co-accused Durga Prasad Patel, Durgesh Patel and Badal Singh @ Manish Singh and no allegation has been made against the present applicant. The investigating officer without making fair & proper investigation and without collecting sufficient evidence submitted the charge sheet against the applicant, therefore, it is prayed to quash the summoning order dated 04.09.2022, charge sheet dated 30.07.2023 as well as impugned FIR.

Learned AGA opposed the prayer and submitted that cognizable offence is made out against the appellant in the impugned FIR, therefore, the present appeal is liable to be dismissed.

After having examined the submissions advanced by learned counsel for the parties and perused the impugned FIR, it transpires that FIR was lodged by the police personal against the three named persons and some unknown persons. Name of present applicant surfaced during the

investigation on the basis of various evidence found against the applicant and after collecting credible evidence the investigation officer has submitted charge sheet against the present applicant. The court concerned has taken cognizance against the applicant.

The quashing of the charge sheet and the entire proceedings can also be done only if it does not disclose any offence or if there is any legal bar which prohibits the proceedings on its basis. The Apex Court decisions in the case of **R.P. Kapur Vs. State of Punjab AIR 1960 SC 866, State of Haryana Vs. Bhajan Lal 1992 SCC(Cr.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cri.) 192 and also in Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.) 283** make the position of law in this regard clear.

From the perusal of record it transpires that at this stage it cannot be said that charge sheet was filed without evidence during investigation, hence, there is no sufficient ground to quash the FIR, summoning order as well as charge sheet. The court below has been vested with sufficient powers to deal with the discharge application moved by the accused-appellant. Hence at this stage the appellant is not entitled for any relief and the appeal is liable to be dismissed.

However, it is directed that if the appellant appears/surrender before the court concerned and moved an applicant for discharge, the same shall be considered and decide by the court below within a period of three months from the date of moving of such application. The applicant is also provided the benefit of the law laid down by the Apex Court in the cases of **Satender Kumar Antil Vs. Central Bureau of Investigation, reported in 2021(10) SCC 773 and Satender Kumar Antil Vs. Central Bureau of Investigation and others Manu/SC/0851/2022.**

With the above observations, this application stands disposed of.

(Renu Agarwal,J.)

Order Date :- 31.10.2023
VKG