

Court No. - 28

Case :- APPLICATION U/S 482 No. - 10902 of 2023

Applicant :- Sayed Shane Haider Naqvi And Another

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

Counsel for Applicant :- Jayant Pratap Singh

Counsel for Opposite Party :- G.A.

Hon'ble Shree Prakash Singh,J.

Heard Sri Jayant Pratap Singh, learned counsel for the applicants, Sri Girijesh Kumar Dwivedi, learned A.G.A. for the State and perused the material placed on record.

Since the legal question is involved in this matter, therefore, issuance of the notice to the opposite party no. 2 is hereby dispensed with.

The instant application under section 482 Cr.P.C. has been filed with the prayer to quash the summoning order dated 04-08-2012 passed by the court of Judicial Magistrate-I, Lucknow and the orders dated 30-09-2023,18-10-2023 and 30-10-2023 passed by the court of ACJM-III,Lucknow, whereby the non bailable warrants and proceedings U/s 82 of Cr.P.C. have been initiated against the applicants in Case No. 884 of 2012 including the entire proceedings of the case arising out of Case Crime No. 37 of 2012, under sections 323, 504, 506, 341, 294 of I.P.C., Police Station-Saadatganj, District-Lucknow.

Learned counsel appearing for the applicants submits that though the summoning order was issued in the year 2012, but, the applicants were kept on appearing before the trial court and due to unavoidable circumstances, they could not appear before the trial court in the month of September, 2023 and thereafter, the non bailable warrants as well as proclamation under section 82 of Cr.P.C. have been issued.

Contention of learned counsel for the applicants is that while passing the impugned order dated 18-10-2023, learned trial court has failed to record the reasons to believe that the applicants would

abscond, which is a condition precedent of the mandate of section 82 of the Cr.P.C. He added that in this way, the order passed by the trial court is against the provisions of law and thus, submission is that the same may be quashed.

On the other hand, learned A.G.A. appearing for the State has opposed the contentions aforesaid and submits that the applicants are absconders and thereafter, the trial court after going through the records, passed the order of non bailable warrants as well issued the proclamation under section 82 of Cr.P.C. so as to procure their presence before the court. Thus, submission is that no interference is warranted.

Considering the submissions of learned counsels for the parties and after perusal of material placed on records, it transpires that the summons were issued in the year 2012 and thereafter, the matter was running and as per the contention of learned counsel for the applicants, the applicants were appearing before the trial court since then and they could not appear before the trial court in the month of September, 2023 and thereafter, the non bailable warrants have been issued.

When this court examines the order dated 18-10-2023 by virtue of which the proclamation under section 82 of Cr.P.C. has been issued, it transpires that no reason has been recorded so as to believe that after issuance of non bailable warrants, the applicants will abscond from the proceedings of the trial.

It is a trite law that once the trial court is issuing the proclamation under section 82 of Cr.P.C., the mandate of provision of section 82 of Cr.P.C. is to be followed, which clearly says that the trial court has to record the reasons to believe while issuing the proclamation under section 82 of Cr.P.C.

In this matter, the order is lacking of the compliance of the provisions of section 82 of Cr.P.C. and therefore, the orders dated 04-08-2012, 30-09-2023 and 18-10-2023 are erroneous, resultantly, the same is hereby set aside.

The matter is remitted back to the trial court concerned to proceed further.

The applicants are directed to remain present before the trial court on each and every date fixed, unless there is any unavoidable circumstances.

Learned counsel for the applicants submits that the applicants undertake that they shall cooperate with the trial proceedings. In case, the applicants avoid the proceedings of the trial court, the trial court is at liberty to proceed further against the applicants, in accordance with law.

With the aforesaid observations and directions, the instant application is hereby **allowed** at the admission stage.

Order Date :- 7.11.2023

AKS