

Court No. - 15

Case :- CRIMINAL APPEAL No. - 3279 of 2022

Appellant :- Nand Kishore Pandey And Another

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

Counsel for Appellant :- Mohd Javed, Jalaj Kumar Gupta

Counsel for Respondent :- G.A., Kaushal Kishore, Shashank Shekhar Singh

Hon'ble Shamim Ahmed, J.

Heard learned counsel for the appellants, Shri Satendra Srivastava, learned A.G.A-I for the State and learned Counsel for the opposite party No.2.

This Criminal Appeal under Section 14A(1) S.C. & S.T. Act, has been preferred on behalf of the appellants against the summoning order dated 18.10.2014 passed by Additional Chief Judicial Magistrate, Court No.2 & 03.11.2022 passed by Special Judge, S.C./S.T. Act, Sitapur in complaint case No.553 of 2019, Indrasen Gautam vs. Munna Pandey and Others, whereby the appellants have been summoned under Section 323, 504 and 506 I.P.C. and Section 3(1)(x) of S.C./S.T. Act, Police Station-Maanpur, District-Sitapur for facing trial as well as for quashing of proceeding of complaint case No.553 of 2019 pending before Special Judge, SC/ST Act, Sitapur.

Rejoinder affidavit filed today in the Court by learned Counsel for the appellants is taken on record.

The contention of the learned counsel for the appellants is that no offence against the appellants are disclosed and the present prosecution has been instituted with a mala fide intention for the purpose of harassment.

Per contra, the learned A.G.A. has contended that from the allegation made in the complaint prima facie offence is made out against the appellants. The innocence of the appellants cannot be adjudged at the pre trial stage. Therefore, the appellants do not deserve any indulgence.

From the perusal of the impugned order, this Court does not find any illegality or irregularity in the impugned order. The entire matter pertains to the factual aspect, which cannot be ascertained at this stage.

At the stage of issuing process the court below is not expected to examine and assess in detail the material placed on record, only this has to be seen whether prima facie cognizable offence is disclosed or not. The Apex Court has also laid down the guidelines where the criminal proceedings could be interfered and quashed in exercise of its power by the High Court in the following cases:-(i) *R.P. Kapoor Vs. State of Punjab*, AIR 1960 S.C. 866, (ii) *State of Haryana Vs. Bhajanlal*, 1992 SCC (Crl.)426, (iii) *State of Bihar Vs. P.P. Sharma*, 1992 SCC (Crl.)192 and (iv) *Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another*, (Para-10) 2005 SCC (Cri.) 283.

From the aforesaid decisions the Apex Court has settled the legal position for quashing of the proceedings at the initial stage. The test to be applied by the court is to whether uncontroverted allegation as made prima facie establishes the offence and the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing criminal proceedings to be continue. In *S.W. Palankattkar & others Vs. State of Bihar*, 2002 (44) ACC 168, it has been held by the Hon'ble Apex Court that quashing of the criminal proceedings is an exception than a rule. The inherent powers of the High Court itself envisages three circumstances under which the inherent jurisdiction may be exercised:-(i) to give effect an order under the Code, (ii) to prevent abuse of the process of the court ; (iii) to otherwise secure the ends of justice. The power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

The High Court would not embark upon an inquiry as it is the function of the Trial Judge/Court. The interference at the threshold of quashing of the criminal proceedings in case in hand cannot be said to be exceptional as it discloses prima facie commission of an offence. **In the result, the prayer for quashing of entire proceedings as well as summoning order is refused.**

However, the appellants are directed to appear and surrender before the court below and apply for bail within three week's from today, the prayer for bail shall be considered expeditiously by the court below in accordance with law after hearing the Public Prosecutor.

With the aforesaid observations, this appeal is finally **disposed of.**

The party shall file computer generated copy of such order

downloaded from the official website of High Court Allahabad or certified copy issued from the Registry of the High Court, Allahabad.

The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

Order Date :- 27.10.2023

Piyush/-