

Court No. - 12

Case :- APPLICATION U/S 482 No. - 12501 of 2023

Applicant :- Sandeep Kumar And 3 Others

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

Counsel for Applicant :- Kamini Gautam, Chandra
Bhooshan, Manvendra Verma

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh, J.

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

2. The present application has been filed under Section 482 Cr.P.C. for quashing the entire proceedings of Crl. Case No.76/2021 arising out of Case Crime No.279 of 2020, under Sections 323, 504 I.P.C., Police Station Neemgaoun, District Kheri as well as order dated 29.01.2021 passed by A.C.J.M., Kheri.

3. Learned counsel for the applicants submits that the offences, under section 323, 504, 506 I.P.C. are non cognizable offence, therefore, the charge sheet filed by the Investigating Officer cannot proceed as a police case and the same is liable to be proceeded with as a complaint case. Learned counsel for the applicant has placed reliance on ***Murli and others Vs. State of U.P. and another, 2008 (61) ACC 54, Virendra Singh and others Vs. State of U.P. and others, 2002 (45) ACC 609 and Shakila Bano and others Vs. State of U.P. and another, 2008 (61) ACC 636.***

4. According to the first Schedule to the Code of Criminal Procedure, the offences, under Sections 323, 504, 506 I.P.C. are non cognizable, therefore, the Explanation to Section 2(d) Cr.P.C., is attracted in this case. Section 2(d) of the Code of

Criminal Procedure provides:

"(d) "Complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report."

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 a complaint and the police officer by whom such report is made shall be deemed to be the complainant.

5. After considering the rival arguments and perusal of record, I am of the considered view that the impugned order is not in accordance with above referred provision of Section 2 (d) Cr.P.C. In view of above, it is wrong, illegal and not sustainable in the eyes of law.

6. In view of above, application (u/s 482 Cr.P.C.) is **allowed**. Matter is remanded back to the Court below for passing appropriate order on the report filed by the Investigating Officer, in accordance with law, in the light of observations made above, after hearing the necessary parties, except the applicants who are proposed accused.

7. Office is directed to communicate this order to C.J.M., concerned for necessary compliance, forthwith.

Order Date :- 21.12.2023

V. Sinha