

Court No. - 23

Case :- APPLICATION U/S 482 No. - 11952 of 2023

Applicant :- Rajesh Kumar Mishra

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

Counsel for Applicant :- Virendra Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Ajai Kumar Srivastava-I,J.

1. Heard Sri Virendra Kumar Mishra, learned counsel for the applicant, learned A.G.A for the State and perused the entire record.

2. The instant application under Section 482 Cr.P.C. has been filed by the applicant for quashing the impugned summoning order dated 07.07.2015 passed by the learned Additional Chief Judicial Magistrate, Room No.26, Lucknow in Complaint Case No.71 of 2014 titled as Sharvan Shukla vs. Geeta Singh and others, under Sections 420, 504, 506 I.P.C., Police Station Ashiyana, District Lucknow including entire proceedings initiated in pursuance thereof.

3. Foremost contention of learned counsel for the applicant is that the impugned summoning order is not in conformity with the statement of the complainant recorded under Section 200 Cr.P.C. and statement(s) of witness(s) recorded under Section 202 Cr.P.C. His further submission is that the learned trial Court while passing the impugned summoning order has failed to appreciate the fact

that the complainant's version of the incident, as stated in the complaint, is not substantiated by the statement of the complainant recorded under Section 200 Cr.P.C. and the statement of witnesses recorded under Section 202 Cr.P.C. Thus, he has contended that even *prima facie* no offence is disclosed against the applicant, despite this fact, he has been summoned to face the trial which is nothing but malicious prosecution and an abuse of the process of the Court.

4. Per contra, learned A.G.A. controverts the submissions of learned counsel for the applicant on the ground that this is not a stage where minute and meticulous exercise with regard to the appreciation of evidence may be done and truthfulness of the allegations could only be tested in a criminal trial. At this initial stage, the fact of innocence of the applicant can also not be determined.

5. Learned A.G.A. further submits that the sufficiency of the material and the test to be applied at the stage of issue of process has been considered in the case of **Nupur Talwar v. Central Bureau of Investigation and Another** reported in **(2012) 11 SCC 465**, wherein it has been reiterated that the test to be applied at the stage was whether the material placed before the Magistrate was "sufficient for proceeding against the accused" and not "sufficient to prove and establish the guilt".

6. On the basis of the aforesaid, he submits that no interference with the impugned summoning order and proceedings is warranted at this stage and, therefore, the application is misconceived and is liable to be dismissed.

7. Having heard learned counsel for parties and upon perusal of the records, it transpires that the allegations in the complaint have been found to be duly corroborated by the statement made on oath by the complainant during the course of examination under Section 200 Cr.P.C. and also the statements of witnesses recorded during inquiry made by the learned Magistrate under Section 202 Cr.P.C.. The impugned order has been passed referring the aforesaid statements recorded under Section 200 Cr.P.C. and under Section 202 Cr.P.C. and only thereafter, impugned summoning order has been passed. Therefore, at this initial stage, no ground for quashing the impugned summoning order and the proceedings of aforesaid case is made out.

8. Accordingly, prayer of quashing the impugned summoning order and the entire proceedings emanating therefrom is hereby refused.

9. Even otherwise, the applicant shall have an opportunity at the appropriate stage to move an application for discharge taking therein all the pleas factual and legal which may be available to her, in accordance with law.

10. In case, such an application is moved before the learned trial Court concerned, the learned trial Court concerned shall dispose of the same by means of a speaking and reasoned order strictly, in accordance with law having regard to entire facts and evidence available on record.

11. However, it is provided that if the applicant appears before the court below and applies for grant of bail, the court below shall consider and decide the same expeditiously, in accordance with law laid down by the Hon'ble Supreme Court in **Satender Kumar Antill vs. Central Bureau of Investigation and another** reported in **2022 SCC OnLine SC 825**.

12. In view of the aforesaid observations, the instant application under Section 482 Cr.P.C. is finally **disposed of**.

(Ajai Kumar Srivastava-I, J.)

Order Date :- 8.12.2023

cks/-