

Court No. - 12**Case :- APPLICATION U/S 482 No. - 11839 of 2023****Applicant :- Bholu @ Suraj And Another****Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And Another****Counsel for Applicant :- Kailash Nath Mishra,Rahul Mishra****Counsel for Opposite Party :- G.A.****Hon'ble Rajeev Singh,J.**

1. In pursuance of earlier order dated 06.12.2023, Shri Hemant Kumar Gaur, SHO, P.S. Colonelganj, District- Gonda is present and placed instruction which is taken on record. He informed that on 24.02.2019, Golu and Bholu Sons of Om Prakash, Punam W/o OM Prakash, Mathura Prasad @ Mukesh S/o Jhabbar assaulted Shivam and Dadhibal, thereafter, they went to the police station and made a written complaint which was registered as NCR No.77/2019 under Section 323, 504 I.P.C. P.S. Colonelganj, District- Gonda at 21:45 hours on 24.02.2019 against Golu and Bholu Sons of Om Prakash, Punam W/o OM Prakash, Mathura Prasad @ Mukesh S/o Jhabbar assaulted Shivam and Dadhibal,, thereafter on 25.02.2019 at 01:00 AM, Mathura Prasad S/o Jhabbar, Golu and Bholu Sons of Om Prakash, Punam forcibly entered into the dwelling house of the Dadhibal Goswami, and Mathura Prasad @ Mukesh caused injury with fire arm to Ramji @ Dhokai and the allegation was also made that the rest of the accused persons caused injury to Dadhibal with lathi and danda. He further informed that after aforesaid NCR, Dadhibal was medically examined on 24.02.2019 at 10:55 PM, thereafter, he was referred to Gonda for ex-ray, on the basis of incident dated 25.02.2019, Ramji was medically examined on 25.02.2019 on 03:25 AM.

2. Shri Hemant Kumar Gaur, SHO, P.S. Colonelganj, District- Gonda informed that both the incidents are entirely different one but the Investigating Officer tried to mix both the incidents, as initially, Section 325 I.P.C. was also added, but later on, he came to the conclusion that both the incidents were different one, therefore, name of the applicant was dropped and Section 325 was also dropped.

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

4. Present application has been moved by the applicants for quashing the impugned order dated 12.07.2023 passed by

Additional Sessions Judge, Room No.2, Gonda in Sessions Trial No.145/2019, State Vs. Mathura Prasad and Ors arising out of Case Crime No.91 of 2019 U/S 307, 323/34 I.P.C., P.S. Colonelganj, District- Gonda.

5. Learned counsel for the applicants submitted that the trial court failed to consider both the incidents as well as deposition of Dadhibal and passed summoning order under Section 319 Cr.P.C., therefore, kind indulgence of this Court is necessary.

6. Learned A.G.A. opposed the prayer of applicants but he does not dispute this fact that on 25.02.2019, no injury was caused to Dadhibal and he was not medically examined as he received injury in the incident which took place on 24.02.2019 but the same was not investigated, and despite registration of the NCR, he did not move any application before the Magistrate for permission to investigate the offences.

7. Considering the submissions of learned counsel for the parties, going through the contents of application, as well as other relevant documents, as it is undisputed fact that two incidents had taken place; one on 24.02.2023 at 9:00 PM and another on 25.02.2023 in the night at 01:00 AM and both the incidents were registered independently and the charge sheet was submitted in the present case for the offence which was committed on 25.02.2019 but the injury relied was caused to Dadhibal on 24.02.2019 in a different accident, therefore, I am of the view that the trial court committed error in passing the order dated 12.07.2023.

8. Accordingly, the application is **allowed** and the order dated 12.07.2023 passed by Additional Sessions Judge, Room No.2, Gonda in Sessions Trial No.145/2019, State Vs. Mathura Prasad and Ors arising out of Case Crime No.91 of 2019 U/S 307, 323/34 I.P.C., P.S. Colonelganj, District- Gonda is hereby **set aside** and the application U/S 319 Cr.P.C. filed before the trial court is **rejected**.

9. Trial court is directed to proceed further in relation to the accused persons against whom, charge sheet was filed and conclude trial, expeditiously.

Order Date :- 14.12.2023

V. Sinha