

**Court No. - 11**

**Case :-** APPLICATION U/S 482 No. - 12440 of 2023

**Applicant :-** Lakshmi Prasad

**Opposite Party :-** State Of U.P. Thru. Its Prin. Secy. Home, Civil Sectr. Lko. And Another

**Counsel for Applicant :-** Vishnu Kumar Srivastava

**Counsel for Opposite Party :-** G.A.

**Hon'ble Saurabh Lavania,J.**

Heard Sri Vishnu Kumar Srivastava, learned counsel appearing for the applicant, learned AGA for the State of U.P. and perused the record.

By means of instant application under Section 482 Cr.P.C., the applicant has prayed for the following main relief:-

*"That for the facts, reasons and circumstances stated in the accompanying affidavit it is most humbly prayed that the Hon'ble Court may graciously be pleased to quash the charge sheet No.457/2020 dated 27.12.2020 under Sections- 323, 504, 506, 427 I.P.C in F.I.R. No. 0435/2020, P.S. - Mawai District Ayodhya, filed against the - applicant/petitioner, further the Hon'ble Court may kindly be pleased to set-aside the Summoning order dated 18.04.2023 issued against the Petitioner under sections 323, 504, 506, 424, 452, 392 I.P.C. by Judicial Magistrate IInd, Faizabad.*

*The Hon'ble court may further be pleased to set-aside the entire proceedings of Case No.1140/2023 (State vs. Lakshmi Prasad and others), in pursuance of Chargesheet No. 0457/2020 dated 27.12.2020 under Sections- 427, 323, 504, 506 I.P.C. in F.I.R. No. 0435/2020, P.S. - Mawai District - Ayodhya pending in the court Learned Apper Civil Judge Junior Division IVth/Judicial Magistrate, Faizabad.*

*The Hon'ble Court may kindly be further pleased to stay the operation, implementation and effect of summoning order dated 18.04.2023 as well as consequential orders thereof issued against the petitioner passed by Court of Apper Civil Judge Junior Division /IVth/Judicial Magistrate, Faizabad in Case No.1140/2023 arising out in concern with aforementioned charge sheet along with the further proceedings of case pending in the court of Apper Civil Judge Junior Division IVth/Judicial Magistrate, Faizabad."*

Learned counsel for the applicant after arguing the matter at some length says that he would only press the relief so far as it relates to taking cognizance by the trial Court vide order dated

18.04.2023.

He submitted that the FIR No. 0435 of 2020 at P.S. Mawai, District Ayodhya was lodged on 04.10.2020 and a perusal thereof would show that it was lodged under Sections 147, 323, 392, 427, 452, 504, 506 IPC and thereafter, the IO submitted charge sheet dated 27.12.2020 against the applicant under Sections 323, 504, 506, 427 IPC, however, the trial Court namely Additional Civil Judge Junior Division /IVth/Judicial Magistrate, Faizabad took cognizance against the applicant under Sections 323, 504, 506, 427, 452, 392 IPC and in regard to other co-accused namely Santram, Shiv Kumar and Akhilesh the IO submitted charge sheet under Sections 323, 504, 506, 427, 452 IPC and accordingly, the cognizance was taken by the trial Court under these sections only against the said accused.

He further submitted that law on the issue is settled. As per settled proposition of law, while taking cognizance, the trial Court is required to take note of the contents of charge sheet including sections indicated therein and at the stage of taking cognizance, it cannot add or subtract the sections. In this regard, reliance has been placed on the judgment passed by Hon'ble Apex Court in the case of ***State of Gujrat vs. Girish Radhakrishnan Vadre*** reported in (2014) 3 SCC 659 and the judgment dated 09.09.2022 passed by this Court in ***Application U/S 482 No. 23830 of 2021 (Smt. Shalini Kashyap and another vs. State of U.P. and others)***.

He further submitted that taking note of settled proposition of law and the recitals of order impugned dated 18.04.2023, interference of this Court is required in the matter. The prayer is to allow the instant application and interfere in the order impugned.

Learned AGA opposed aforesaid prayer of applicant's counsel, however, he could not dispute the legal proposition of law as placed before this Court by applicants' counsel.

Considered the aforesaid and perused the record.

From the charge sheet annexed as Annexure No. 1 to this application, it is apparent that the IO submitted charge sheet against the applicant under Sections 323, 504, 506, 427 IPC. It also reflects from the impugned order dated 18.04.2023 that in regard to the applicant, cognizance has been taken by the trial Court under Sections 323, 504, 506, 427, 392, 452 IPC and against other accused namely Santram, Shiv Kumar and Akhilesh, cognizance has been taken under Sections 323, 504, 506, 427, 452 IPC, in which the IO submitted charge sheet

against them.

In the judgments referred by the applicant's counsel, it has been held that at the time of taking cognizance, the trial Court cannot add or subtract sections.

For the reasons aforesaid, this Court is of the view that interference is required in the matter. According, the order impugned dated 18.04.2023 is hereby set-aside so far as it relates to the accused/applicant namely Lakshmi Prasad. The matter is remanded back to trial Court concerned to pass a fresh order after taking note of aforesaid judgments expeditiously.

The instant application is ***partly allowed*** in above terms.

**Order Date :-** 20.12.2023

Jyoti/-