

Court No. - 11

Case :- APPLICATION U/S 482 No. - 12700 of 2023

Applicant :- Tarkeshwar Sharma And Another

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

Counsel for Applicant :- Rajat Gangwar, Ashmita Singh, Vikas Vikram Singh

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania, J.

Heard learned counsel appearing for the applicants, learned AGA for the State of U.P. and perused the record.

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

"i. Quash and set aside the impugned summoning order dated 29.07.2022 passed by the Learned Special C.J.M. Custom, Lucknow in Criminal Case No. 69782/2022, State v. Karunesh Rai and Others, Case Crime No. 0106 of 2020, u/s 323 and 324 I.P.C., P.S. Gazipur, District Lucknow (contained herein as Annexure-1) to the extent it pertains to the Petitioners.

ii. Quash and set aside the impugned charge-sheet dated 29.06.2020 bearing no. 01 of 2020 (contained herein as Annexure-2) filed in Criminal Case No. 69782/2022, State v. Karunesh Rai and Others, Case Crime No. 0106 of 2020, u/s 323 and 324 I.P.C., P.S. Gazipur, District Lucknow pending on the file of the Learned Special C.J.M. Custom, District Lucknow to the extent it pertains to the Petitioners.

iii. Quash and set aside the entire proceedings in Criminal Case No.69782/2022, State v. Karunesh Rai and Others, Case Crime No. 0106 of 2020, u/s 323 and 324 I.P.C., P.S. Gazipur, District Lucknow pending on the file of the Learned Special C.J.M. Custom, District Lucknow to the extent it pertains to the Petitioners."

Learned counsel for the applicants, 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 29.07.2022.

He submitted that the FIR No. 0106 of 2020 at P.S. Gazipur, District Lucknow North (Commissionerate Lucknow) was lodged on 31.01.2020 and a perusal thereof would show that it was lodged under Sections 323, 504, 354 IPC and thereafter, the Investing Officer submitted charge sheet against the applicants on 29.06.2020 under Sections 323, 324 IPC, however, the trial Court took cognizance against the applicant under Sections 323, 324 IPC.

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; (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 29.07.2022, 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. 2 to this application, it is apparent that the IO submitted charge sheet against the applicants under Sections under Sections 323, 504 IPC. It also reflects from the impugned order dated 29.07.2022 that in regard to the applicants namely Tarkeshwar Sharma and Smt. Bindubala Sharma cognizance has been taken by the trial Court under Sections 323 324 IPC and against other accused namely Karunesh Rai, Smt. Vandana Rai cognizance has been taken under Sections 323, 324 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. Accordingly, the order impugned dated 29.07.2022 is hereby set-aside so far as it relates to the applicants namely Tarkeshwar Sharma and Smt. Bindubala Sharma. 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 :- 22.12.2023/Vinay/-