

Court No. - 28

Case :- APPLICATION U/S 482 No. - 2107 of 2015

Applicant :- Ashok Kumar And Ors.

Opposite Party :- The State Of U.P And Anr.

Counsel for Applicant :- Mukul Rakesh, Kunwar Sushant Prakash

Counsel for Opposite Party :- Govt. Advocate, Kailash Nath Tiwari

Hon'ble Arun Kumar Singh Deshwal, J.

Heard Sri Kunwar Sushant Prakash, learned counsel for applicants and learned A.G.A. for the State.

"Wherefore it is most respectfully prayed that the Hon'ble Court may kindly be pleased to quash the charge sheet dated 05.12.2014 and consequential summoning/cognizance order dated 13.01.2015 passed by Additional Chief Judicial Magistrate VII, Court No.31, Lucknow in Case No.0001230/2015, State vs. Ashok Kumar and others arising out Case Crime No.328 of 2014 under Section 504/506 IPC, Police Station Banthara, District Lucknow.

It is further prayed that the Hon'ble Court may kindly be pleased to stay the further proceedings in Case No.0001230/2015; State vs. Ashok Kumar and others arising out of Case Crime No.328 of 2014, under Sections 504/506 IPC., P.S. Banthara, District Lucknow pending in the court of Additional Chief Judicial Magistrate VII, Court No.31, Lucknow, during the pendency of the instant petition."

Contention of learned counsel for the applicant is that cognizance order is bad in the eye of law as the same was explicit from the order itself that was nothing but simply filling up the printed proforma. It is further submitted that practice of taking cognizance by filling the printed proforma is deprecated by Hon'ble Apex Court as well as by this Court in number of judgments.

Though learned A.G.A. supported the impugned cognizance order dated 13.01.2015 but could not dispute the aforesaid fact.

Considering the aforesaid submissions of learned counsel for parties and from perusal of the record, it is clear that the cognizance order dated 13.01.2015 is simply printed proforma which was filled up and signed by the Additional Chief Judicial Magistrate VII, Court No.31, Lucknow.

Hon'ble Apex Court in the judgment of ***Lallan Kumar vs.State***

of Maharashtra, 2002 SCC Online SC 1383 observed that order of issuance of process is not empty formality. The Magistrate before issuing process is required to apply his mind. Paragraph 38 of the said judgement is quoted below:-

38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation, which reads thus:

"51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

This Court in the case of **Ankit vs. State of U.P. and another, (2009) Vol-9 ADJ 778**, decided on 15.10.2009 as well as in the case of **Surendra Kumar and others vs. State of U.P. and others, (2021), Vol-7 ADJ 61** also deprecated the practice of passing cognizance order by simply filling up the printed proforma by the Judicial Magistrate.

This Court again in the judgement of **Amit Kumar Dwivedi vs. State of U.P. in Application under Section 482 Cr.P.C. No. 35443 of 2023** after taking into consideration the observation of Hon'ble Apex Court as well as of this High Court has clearly

observed that filling up the printed proforma while taking cognizance is non application of mind and also deprecated the practice of filling up the printed proforma on the part of Judicial Magistrate while taking cognizance and copy of that order was also directed to be circulated amongst all the District Judges of U.P. to sensitize all Judicial Officers with the procedure for taking cognizance and also direction not to take cognizance by filling up the printed proforma. Paragraph 9 of the said judgment is quoted herein below:-

"9. In view of above legal position, this Court is of the view that merely signing and filling up the date and case crime number in printed proforma is absolutely non-application of mind because the cognizance order must reflect the prima facie opinion of the learned Magistrate on the material collected during investigation. Order of issuance of process is not an empty formality, it may affect the personal liberty of a person. Article 21 of Constitution of India guarantees personal liberty of a person and same cannot be deprived of, without due procedure of law. Apart from this, summoning of accused to appear before criminal court after taking cognizance is a serious matter, affecting the dignity, self-respect and image in society. Therefore, proper process by the criminal court must be followed at the time of taking cognizance and summoning the accused."

In view of the above legal position, the impugned cognizance order dated 13.01.2015 is absolutely non application of mind on the part of the Additional Chief Judicial Magistrate VII, Court No.31, Lucknow and against the law laid down by Hon'ble Apex Court as well as by this Court. The order dated 13.01.2015 passed by the Additional Chief Judicial Magistrate VII, Court No.31, Lucknow in Case No.328 of 2014, under Sections 504/506 IPC., P.S. Banthara, District Lucknow is hereby quashed. It is further directed that the court concerned shall pass fresh order within a period of one month after taking into consideration the observations as mentioned above.

Order Date :- 11.1.2024

Renu/-