

**Court No. - 11**

**Case :-** APPLICATION U/S 482 No. - 2660 of 2024

**Applicant :-** Amresh Kumar Tripathi

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

**Counsel for Applicant :-** Sanjay Kumar Sharma

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

**Hon'ble Rajesh Singh Chauhan,J.**

Heard Sri Sanjay Kumar Sharma, learned counsel for the applicant and learned A.G.A. for the State.

The instant application under Section 482 Cr.P.C. has been filed by the applicant for quashing the entire criminal proceeding of Case no. 1399 of 2015 'State vs. Sunil Tripathi and others' arising out of Case Crime no. 382 of 2014 u/s 125 of Representation of Peoples Act and section 153 -A/504/505 I.P.C., P.S. Kotwali Nagar, District Gonda pending in the court of C.J.M., Gonda and impugned summoning order dated 28.5.2015 as well as impugned charge-sheet dated 8.8.2014 and for staying the proceedings of aforesaid criminal cases during the pendency of the petition.

Foremost submission of learned counsel for the applicant is that the learned Magistrate did not apply his judicial mind at the time of passing the summoning order against the applicant because the impugned summoning order has been passed on a printed proforma, which is not permissible under law. In support of his contention, learned counsel for the applicant has placed reliance upon the judgment in the case of **Ankit Vs. State of U.P. & Another; 2009 (9) ADJ 778.**

Learned counsel for the applicant has further submitted that the impugned first information report does not disclose any cognizable offence against the applicant and the investigation of the matter was carried out in a routine and casual manner and a charge sheet has been filed against the applicant without collecting credible evidence. He has further submitted that the present impugned criminal proceeding is nothing but malicious prosecution and an abuse of process of the Court, therefore, impugned summoning order is liable to be quashed.

Per contra, learned A.G.A. has opposed the aforesaid contention of learned counsel for the applicant. However, he could not dispute the fact that the impugned summoning order dated 28.05.2015 has been passed on a printed proforma, wherein the

name of accused persons and sections has been filed in the blank spaces.

Hon'ble Supreme Court in the case of **Darshan Singh Ram Kishan v. State of Maharashtra** reported in **MANU/SC/0089/1971: (1971) 2 SCC 654** has held as under:-

*"8. As provided by Section 190 of the Code of Criminal Procedure, a Magistrate may take cognizance of an offence either, (a) upon receiving a complaint, or (b) upon a police report, or (c) upon information received from a person other than a police officer or even upon his own information or suspicion that such an offence has been committed. As has often been held, taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a police officer. Therefore, when a Magistrate takes cognizance of an offence upon a police report, prima facie he does so of the offence or offences disclosed in such report."*

*(Emphasis supplied)*

In **Sunil Bharti Mittal v. Central Bureau of Investigation, AIR 2015 SC 923** (Three Judges Bench) Hon'ble Apex Court held as under:

*"47. However, the words "sufficient grounds for proceeding" appearing in the Section 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.."*

Therefore, it is essential that due application of mind should be reflected from the order taking cognizance.

This Court in the case of **Ankit vs. State of U.P. (supra)** in paragraph nos.10 & 11 has held as under:-

*"10. Below aforesaid sentence, the seal of the Court containing name of Sri Talevar Singh, the then Judicial Magistrate-III, has been affixed and the learned Magistrate has put his short signature (initial) over his name. The manner in which the impugned order has been prepared shows that the learned Magistrate did not at all apply his judicial mind at the time of passing this order and after the blanks were filled up by some employee of the Court, he has put his initial on the seal of the Court. This method of passing judicial order is wholly illegal. If for the shake of argument, it is assumed that the blanks on the printed proforma were filled up in the handwriting of learned Magistrate, even then the impugned order would be illegal and invalid, because order of taking cognizance or any other judicial order cannot be passed by filling up blanks on the printed proforma. Although as held by this Court in the case of Megh Nath Gupta v. State of U.P., [2008 (62) ACC 826.] in which reference has been made*

*to the cases of Deputy Chief Controller Import and Export v. Roshan Lal Agrawal, [2003 (46) ACC 686 (SC).] U.P. Pollution Control Board v. Mohan Meakins, [(2000) 3 SCC 745 : AIR 2000 SC 1456.] and Kanti Bhadra v. State of West Bengal, [2000 (40) ACC 441 (SC).] the Magistrate is not required to pass detailed reasoned order at the time of taking cognizance on the charge-sheet, but it does not mean that order of taking cognizance can be passed by filling up the blanks on printed proforma. At the time of passing any judicial order including the order taking cognizance on the charge-sheet, the Court is required to apply judicial mind and even the order of taking cognizance cannot be passed in mechanical manner. Therefore, the impugned order is liable to be quashed and the matter has to be sent back to the Court below for passing fresh order on the charge-sheet after applying judicial mind.*

*11. Consequently, the application under section 482 is allowed and impugned order is set aside. The learned Magistrate concerned is directed to pass fresh order on the charge-sheet in Criminal Case No. 252 of 2009 (State v. Ankit) arising out of Case Crime No. 202 of 2008 of P.S. Gagal Hedi, District Saharanpur."*

*(Emphasis supplied)*

It is thus, abundantly clear that the use of blank printed proforma for passing the judicial order and that too while passing the impugned summoning order cannot be said to reflect the application of judicial mind while passing impugned summoning order.

In view of the aforesaid overall facts and circumstances of the case, the impugned order dated 28.05.2015, cannot be legally sustained because of non-application of mind which has resulted in miscarriage of justice.

Consequently, the application under section 482 Cr.P.C. is **allowed** and the impugned summoning / cognizance order dated 28.5.2015 passed by the C.J.M., Gonda and the charge-sheet dated 8.8.2014 filed in Criminal Case No. 1399 of 2015 'State vs. Sunil Tripathi and others' arising out of Case Crime no. 382 of 2014 u/s 125 Representation of People Act and section 153-A/504/505 IPC, P.S. Kotwali Nagar, District Gonda are hereby **quashed**. The learned Magistrate concerned is directed to pass a fresh order on the charge-sheet in Criminal Case No. 1399 of 2015 'State vs. Sunil Tripathi and others' arising out of Case Crime no. 382 of 2014 u/s 125 of Representation of People Act and section 153-A/504/505 IPC, P.S. Kotwali Nagar, District Gonda in accordance with law.

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**[Rajesh Singh Chauhan, J.]**

**Order Date :- 19.3.2024**

**Om**