

Court No. - 11

Case :- APPLICATION U/S 482 No. - 6247 of 2024

Applicant :- Mohit Kumar And Others

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home, Lko. And Others

Counsel for Applicant :- Krishna Kumar Shukla, Vinod Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Abdul Moin, J.

Heard learned counsel for the applicants and learned AGA appearing on behalf of the State.

Instant application under Section 528 of the Bhartiya Nagrik Suraksha Sanhita, 2023 has been filed challenging the judgment and order dated 05.06.2024 passed by the learned Session Judge, Shravasti in Criminal Revision No. 28 of 2024 Inre; Mohit Kumar and Ors Vs. State of U.P and Ors by which the revision has been partly allowed. A further prayer is for a direction to set aside the order dated 18.04.2024 passed by the learned Session Judge, Shravasti in Complaint No. 9192 of 2023 Inre; Raj Kumari Maurya Vs. Mohit Kumar and Ors by which the applicants no. 1 to 3 have been summoned under Sections 354, 504, 506 and 452 I.P.C, a copy of which is annexure 1 to the application and applicant no. 4 has been summoned under Sections 504 & 506 of I.P.C, a copy of which is annexure 2 to the application.

Taking various grounds which were available to the applicants including the ground of the applicant no. 4 being incarcerated in jail for the period from 22.03.2022 to 06.09.2023 as per the certificate, a copy of which is annexure 7 to the application, the applicants filed a revision before the revisional Court which was numbered as 28 of 2024 Inre; Mohit Kumar and Ors Vs. State of U.P and Ors.

The learned revisional Court vide order impugned dated 05.06.2024 after considering all aspects of the matter has set aside the summoning order dated 18.04.2024 so far as it summoned the applicants no. 1 to 3 under Section 354, 504, 506 & 452 I.P.C and the said order in entirety with respect to applicant no. 4. The matter has been remitted to the learned Trial Court to pass a fresh order after hearing the complainant in the light of the observations made in the said judgment.

Being aggrieved, the instant application has been filed.

Contention of learned counsel for the applicants is that the the learned revisional Court has erred in law in not setting aside the summoning order *in toto* i.e under the provisions of Sections 354 & 452 more

particularly when the applicants have canvassed and demonstrated before the learned revisional Court about the perversity in the summoning order dated 18.04.2024 and hence pray that the entire summoning order itself should be set aside.

On the other hand, learned AGA has placed reliance on the judgment of the Apex Court passed in Criminal Appeal No. 1025-1026 of 2023 Inre; Central Bureau of Investigation Vs. Aryan Singh and Ors decided on 10.04.2023 to argue that the Apex Court in the said judgment has considered the scope of Section 482 Cr.P.C and has held that the High Court cannot conduct a mini trial and it would not be a stage for the High Court where the prosecution/investigating agency is required to prove the charges inasmuch as the charges are required to be proved only during the trial on the basis of evidence led by the prosecution and that there cannot be any question of this Court going into the details of the allegations and the material collected.

Heard the learned counsel appearing on behalf of the contesting parties and perused the records.

From a perusal of records it emerges that upon a complaint being filed by the respondent no. 4 herein, the learned Court had taken a cognizance and registered it as Case No. 9192 of 2023 and has summoned the applicants no. 1 to 3 under the provisions of Sections 354, 504, 506 & 452 I.P.C and the applicant no. 4 under the provisions of Section 504 & 506 I.P.C.

A perusal of the summoning order would indicate that the respondent no. 2 is alleged that all the applicants had entered into the house and had used criminal force with intent to outrage her modesty.

Considering the aforesaid, the Court had issued the summoning order dated 18.04.2024.

Being aggrieved, the applicants filed a revision which was registered as Criminal Revision No. 28 of 2024. Various grounds had been taken by the applicants before the revisional Court including the ground that the applicant no. 4 herein was incarcerated in jail for the period from 22.03.2022 to 06.09.2023 and as per the version of the complainant, the incident is said to have occurred on 02.07.2023.

The learned revisional Court after considering the entire aspect of the matter was of the view that no case is made out against the applicant no. 4 under the provisions of Sections 504 & 506 of the I.P.C and further no case was also made out that the applicants no. 1 to 3 under the provisions of Sections 504 & 506 but the summoning order under the provisions of Section 354 & 452 of the I.P.C was maintained. Further, the Matter has been remitted to the learned Court vide order dated 05.06.2024 passed by the learned revisional Court to pass a

fresh order after hearing the complainant in the light of the observations made in the said judgment.

Being aggrieved, the applicants have approached this Court.

Apart from the ground which has already been taken by the applicants before the learned revisional Court i.e the applicant no. 4 having been incarcerated in jail for the period from 22.03.2022 to 06.09.2023, it has been contended that the complaint itself has been lodged after a period of four months. Various other grounds have also been urged before this Court.

However, the aforesaid arguments may not detain the Court inasmuch as from a perusal of the summoning order itself dated 18.04.2024, prima facie the offence under Sections 354 & 452 I.P.C is made out.

The Hon'ble Apex Court in the case of **Aryan Singh (supra)** has held as under:-

"4.1 From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under [Section 482 Cr.P.C.](#), the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution / investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution / investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under [Section 482 Cr.P.C.](#), the Court has a very limited jurisdiction and is required to consider "whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not".

From a perusal of the judgment of the Apex Court in the case of **Aryan Singh (supra)** it clearly emerges that while exercising jurisdiction under Section 482 Cr.P.C the Court is not required to conduct a mini trial or go into the veracity of the allegations inasmuch as the charges are required to be proved during the trial on the basis of evidence which is led by the parties.

Considering the aforesaid more particularly when from a perusal of the order dated 18.04.2024 prima facie a case under Sections 354 & 452 I.P.C is clearly made out against the applicants no. 1 to 3 as well as the fact that the applicant no. 4 having been incarcerated in jail on the date when the alleged incident has occurred consequently, no error is found in the order impugned.

Accordingly, the application is rejected.

Needless to mention that observations made in this order are only for deciding the application under Section 528 of the Bhartiya Nagrik Suraksha Sanhita, 2023 and would not influence the learned Court below while deciding the case.

Order Date :- 16.7.2024

Pachhere/-