

Court No. - 13

Case :- APPLICATION U/S 482 No. - 11297 of 2024

Applicant :- Asad Ullah

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

Counsel for Applicant :- Vikas Sharma

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh,J.

1. Heard.

2. The instant application has been filed for quashing the charge-sheet dated 27.10.2021 as well as the entire proceeding of session trial no. 1279 of 2021 titled as "*State versus Ali Hasan @Mohd. Aamir and anothers*" arising out of case crime no. 0081 of 2021 under Sections 34/323, 34/504, 34/506, 34/354, 376D IPC and Sections 9(G) 10, 5(G) / 6 POSCO Act, relating to Police Station- Hatigawa, District- Pratapgarh; to quash the impugned summoning order dated 16.12.2021 and N.B.W order dated 12.06.2024 passed by learned Court of Special Court (POSCO Act) Pratapgarh in session trial no. 1279 of 2021.

3. Learned counsel for the applicant submits that on the basis of incorrect facts, the F.I.R. of the case in question was lodged, thereafter, the charge-sheet was submitted by the Investigating Officer for the offense u/s 323, 504, 506, 354, 7/8 of P.O.C.S.O. Act, but learned trial Court took cognizance and issued summons u/s 34/323, 34/504, 34/506, 34/354, 376-D I.P.C., Section 9(g)10, 5(g)/6 of P.O.C.S.O. Act.

Relying on the decision of Hon'ble Apex Court passed in the case of *State of Gujarat Vs. Girish Radhakrishnan Varde* reported in **2014 SCC 3 659**, learned counsel for the applicant further submits that at the time of taking cognizance and issuing summons, no additional section can be added by learned trial Court, hence, the summoning order dated 16.12.2021 was passed by violating the law laid down by Hon'ble Apex Court in the aforesaid case.

4. Learned A.G.A. vehemently opposes the prayer of applicant and submits that the charge-sheet has already been submitted for the offense u/s 323, 504, 506, 354, 7/8 of P.O.C.S.O. Act, but summoning order was issued for the offense u/s 34/323,

34/504, 34/506, 34/354, 376-D I.P.C., Section 9(g)10, 5(g)/6 of P.O.C.S.O. Act.

5. Considering the submissions of learned counsel for the applicant, learned A.G.A. and going through the contents of application, the impugned order, judgement relied by learned counsel for the applicant as well as other relevant documents, it is evident that admittedly, the charge-sheet has already been submitted for the offense u/s 323, 504, 506, 354, 7/8 of P.O.C.S.O. Act, but cognizance was taken by learned trial Court and summoning order was issued for the offense u/s 34/323, 34/504, 34/506, 34/354, 376-D I.P.C., Section 9(g)10, 5(g)/6 of P.O.C.S.O. Act. Hon'ble Apex Court in the aforesaid relied judgement has categorically observed that the at the time of taking cognizance and issuance of summons, no other sections can be added except as mentioned in the charge-sheet. Therefore, with the consent of learned counsel for the parties, the impugned summoning order dated 16.12.2021 is hereby ***set aside*** with liberty to learned trial Court to pass fresh order in accordance with law.

6. With above directions, this application is ***allowed***.

7. The officer present today need not to appear until further order.

Order Date :- 19.12.2024

Arpan