

Court No. - 13

Case :- APPLICATION U/S 482 No. - 11424 of 2024

Applicant :- Suresh Kumar Mishra

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

Counsel for Applicant :- Bal Keshwar Srivastava,Pankaj
Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh,J.

1. Heard learned counsel for the applicant, learned A.G.A and perused the record.
2. The present application has been filed under Section 482 Cr.P.C. for quashing the entire Criminal proceeding of case no. 0053 of 2024; State versus Suresh Mishra along with charge sheet no.1 of 2024, under Sections 504 IPC arising out of crime number 0053/2024 under section 507 I.P.C. P.S. Jankipuram, District- Lucknow, as well as cognizance order dated 12-04-2024. passed by the Additional Chief Judicial Magistrate-V, Lucknow in the aforesaid case.
3. Learned counsel for the applicant submits that the offences, under section 504 I.P.C. are non cognizable offence, therefore, the charge sheet filed by the Investigating Officer cannot proceed as a police case and the same is liable to be proceeded with as a complaint case. Learned counsel for the applicant has placed reliance on *Murli and others Vs. State of U.P. and another, 2008 (61) ACC 54, Virendra Singh and others Vs. State of U.P. and others, 2002 (45) ACC 609 and Shakila Bano and others Vs. State of U.P. and another, 2008 (61) ACC 636.*
4. According to the first Schedule to the Code of Criminal Procedure, the offences, under Sections 323, 504, 506 I.P.C. are

non cognizable, therefore, the Explanation to Section 2(d) Cr.P.C., is attracted in this case. Section 2(d) of the Code of Criminal Procedure provides:

"(d) "Complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report."

Explanation- A report made by a police officer in a case, which discloses, after investigation, the commission of a non-cognizable offence shall be deemed a complaint and the police officer by whom such report is made shall be deemed to be the complainant.

5. After considering the rival arguments and perusal of record, I am of the considered view that the impugned order is not in accordance with above referred provision of Section 2 (d) Cr.P.C. In view of above, it is wrong, illegal and not sustainable in the eyes of law.

6. In view of above, application (u/s 482 Cr.P.C.) is **allowed**. Matter is remanded back to the Court below for passing appropriate order on the report filed by the Investigating Officer, in accordance with law, in the light of observations made above, after hearing the necessary parties, except the applicants who are proposed accused.

7. Office is directed to communicate this order to C.J.M., concerned for necessary compliance, forthwith.

Order Date :- 18.12.2024

V. Sinha