

Court No. - 14

Case :- APPLICATION U/S 482 No. - 11591 of 2024

Applicant :- Satish Kumar Singh Alias Satish Singh And 4 Others

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

Counsel for Applicant :- Sunil Dixit

Counsel for Opposite Party :- G.A.

Hon'ble Ajai Kumar Srivastava-I,J.

1. Heard learned counsel for the applicants, learned A.G.A. for the State and perused the record.

2. The instant application under Section 482 Cr.P.C. has been filed by the applicants for quashing the order dated 11.10.2023 passed by learned A.C.J.M. II Raebareli passed in Complaint Case No.14761 of 2023, under Sections 323, 504, 506 and 427 I.P.C. (Shiv Nayak Singh vs. Virendra Kumar and Others) and order dated 20.11.2024 passed by learned A.S.J. VII/ Special Judge (N.D.P.S. Act) Raebareli passed in Criminal Revision No.197 of 2024 (Satish and others vs. State of U.P. and another) relating to Police Station Naseerabad, District Raebareli, pending in the Court of Additional Chief Judicial Magistrate II Raebareli and entire proceedings initiated thereof, so far it relates to the applicants.

3. Learned counsel for the applicants that a false case came to be lodged against the applicants by the opposite party no.2 for some ulterior reasons. His further submission is that, in fact, there is a old dispute regarding encroachment of road as well as some landed property between the parties. In order to buttress his aforesaid submissions, attention of this Court has been drawn to page no.51 of the instant application and on the basis thereof he submits that Phoolmati, mother of the applicant no.3 moved an application against the various persons including the opposite party no.2 for removal of illegal encroachment made by them

on 15.07.2023 whereas the complaint has come to be lodged on 07.08.2023.

4. His next submission is that the impugned summoning order dated 11.10.2023 is not in conformity with the statement of the complainant recorded under Section 200 Cr.P.C. and statements of witnesses, recorded under Section 202 Cr.P.C. The learned trial Court while passing the impugned summoning order has failed to appreciate the fact that the complainant's version of the incident, as stated in the complaint, is not substantiated by the statement of the complainant recorded under Section 200 Cr.P.C. and the statement of witnesses recorded under Section 202 Cr.P.C. Thus, that even prima facie no offence is disclosed against the applicants, despite this fact, he has been summoned to face the trial which is nothing but malicious prosecution and an abuse of the process of the Court.

5. Per contra, learned A.G.A. has submitted that this is not a stage where minute and meticulous exercise with regard to the appreciation of evidence may be done and truthfulness of the allegations could only be tested in a criminal trial. At this initial stage, the fact of innocence of the applicants can also not be determined.

6. Learned A.G.A. further submits that the sufficiency of the material and the test to be applied at the stage of issue of process has been considered in the case of **Nupur Talwar v. Central Bureau of Investigation and Another reported in (2012) 11 SCC 465**, wherein it has been reiterated that the test to be applied at the stage was whether the material placed before the Magistrate was "sufficient for proceeding against the accused" and not "sufficient to prove and establish the guilt".

7. He has also drawn attention of this Court to a recent judgment rendered by Hon'ble Supreme Court in **CBI v. Aryan Singh, 2023 SCC OnLine SC 379**, wherein it has been held that 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. 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".

8. On the basis of the aforesaid, he submits that no interference with the impugned summoning order and proceedings is warranted at this stage and, therefore, the application is misconceived and is liable to be dismissed.

9. Having heard learned counsel for the parties and upon perusal of the records including the impugned summoning order dated 11.10.2023, it transpires that the allegations in the complaint have been found to be duly corroborated by the statement made on oath by the complainant during the course of examination under Section 200 Cr.P.C. and also the statements of witnesses recorded during inquiry made by the learned Magistrate under Section 202 Cr.P.C.. The impugned order has been passed referring the aforesaid statements recorded under Section 200 Cr.P.C. and under Section 202 Cr.P.C. and only thereafter, impugned summoning order has been passed. Therefore, at this initial stage, no ground for quashing the impugned summoning order and the proceedings of aforesaid case is made out.

10. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. In this regard reference may be made to a judgment rendered by Hon'ble Supreme Court in **Dy. Chief Controller of Imports & Exports v. Roshanlal Agarwal, (2003) 4 SCC 139.**

11. Hon'ble Supreme Court in **U.P. Pollution Control Board v. Mohan Meakins Ltd., (2000) 3 SCC 745** has categorically held that while issuing process, the Magistrate must not anticipate the decision Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of inquiry.

11. In **Chandra Deo Singh v. Prokash Chandra Bose, 1963 SCC OnLine SC 4** Hon'ble Supreme Court has held that whether evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of inquiry.

12. Having regard to the aforesaid settled legal position, this Court is of the considered view that the grounds which have been taken to quash the impugned order dated 11.10.2023 call for adjudication on pure questions of fact which may be adequately adjudicated upon only by the trial court and while doing so even the submissions made on points of law can also be more appropriately gone into by the trial court in this case. This Court does not deem it proper, and therefore cannot be persuaded to have a pre-trial before the actual trial begins. A threadbare discussion of various facts and circumstances, as they emerge from the allegations made against the accused, is being purposely avoided by the Court for the reason, lest the same might cause any prejudice to either side during trial. Therefore, this Court does not find any justification to quash the proceedings against the applicants as the case does not fall in any of the categories recognized by Hon'ble the Supreme Court which may justify their quashing.

13. Accordingly, prayer of quashing the impugned summoning order dated 11.10.2023 and proceedings emanating therefrom is hereby refused.

14. Even otherwise, the applicants shall have an opportunity at the appropriate stage to move an application for discharge taking therein all the pleas, factual and legal which may be available to them. In case, such an application is moved before the learned trial Court, the learned trial Court shall

dispose of the same with utmost expedition by means of a speaking and reasoned order in strict accordance with law having regard to the entire facts and evidence available on record

15. However, it is needless to mention that in case the applicants apply for bail within four weeks from today, the learned trial Court concerned shall consider and decide the same expeditiously, in accordance with law laid down by the Hon'ble Supreme Court in **Satender Kumar Antill Vs. Central Bureau of Investigation and others : MANU/ SC/ 1024/ 2021** and **Satender Kumar Antill Vs. Central Bureau of Investigation and another reported in 2022 SCC Online SC 825** by keeping the process, if any, which is found to be issued against the present applicants in abeyance for the aforesaid period only.

16. In view of the aforesaid observations, the instant application under Section 482 Cr.P.C. is finally **disposed of**.

Order Date :- 18.12.2024
Mahesh