

Court No. - 72

Case :- APPLICATION U/S 482 No. - 43473 of 2024

Applicant :- Shivesh Singh

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Manoj Kumar Singh, Sujan Singh

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma, J.

1. Heard learned counsel for the applicant, learned counsel for the informant and Sri Sanjay Kumar Singh, learned AGA.

2. The present 482 Cr.P.C. application has been filed to quash the entire proceeding of Criminal Case No.9042 of 2019 (State vs. Shiv Prakash @ Prakash and others) arising out of Case Crime No.304 of 2018, under sections 504, 506 387 I.P.C., Police Station Kotwali, District Azamgarh, pending in the court of Chief Judicial Magistrate, Azamgarh.

3. By way of present 482 Cr.P.C. application, the applicant has challenged the judgment and orders dated 05.01.2024 by which the applicant's discharge application has been rejected and judgment and order dated 08.01.2024 charge has been framed against the applicant. The judgment and order dated 05.01.2024 has been filed with supplementary affidavit, same is part of the record. It is submitted that FIR was registered under sections 386, 504 & 506 I.P.C. named accused persons including the applicant were accused in murder of brother of the informant in which 15.10.2018 was date fixed. The applicant went to court then named accused persons grabbed the applicant, threatened and abused that more than 15 lakhs had been spent in doing *pairvi* of the case. Now stop doing *pairvi* otherwise you would be also murdered. F.I.R. was registered on 17.10.2018, under sections 504, 506 & 386 I.P.C. Investigating Officer has investigated the matter and submitted charge-sheet under sections 504, 506 & 386 I.P.C. and court took cognizance and issued summons under aforesaid sections. Thereafter, the applicant filed discharge application before trial court and trial court by order dated 05.01.2024 rejected the discharge application of the applicant and passed order to frame charge under sections 387, 504 & 506 I.P.C. Subsequently, by order dated 08.01.2024 framed the charge against the applicant in the aforesaid sections. Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the

present case. Allegation alleged in the FIR is false and baseless, not supported by any evidence and trial court while rejecting discharge application and framing charge, has not considered the material evidence and has not framed charge under sections 34 & 120B I.P.C. Whole allegation alleged against the applicant is false and baseless, not supported by any material evidence and before framing charge, the applicant was not heard and in arbitrary manner charge was framed under sections 387, 504 & 506 I.P.C. The provision under section 240 I.P.C. provides that before framing charge, the applicant should be heard properly and framing of charge against the applicant in aforesaid sections are without affording opportunity of hearing to the applicant and is liable to be set aside.

4. Per contra, learned A.G.A. and learned counsel for the informant vehemently opposed the submission raised by applicant's counsel and submitted that the present application is filed with concealment of material facts as the applicant challenged the order dated 05.01.2024 by way of filing Revision No.997 of 2024 and subsequently withdraw the revision to challenge the charge framed order dated 08.01.2024. The Criminal Revision No.997 of 2024 filed by the applicant has been dismissed as not pressed. He next submitted that applicant having criminal history of more than 13 cases, which has not been explained in the affidavit. There is no whisper in this regard in the affidavit. Learned counsel for the informant next averred that the order dated 05.01.2024 has been passed by Chief Judicial Magistrate after hearing both the parties. Application, in regard to discharge, moved on 01.01.2024 by the applicant. Trial court considered all the materials available on record and found that no offence under section 386 I.P.C. is made out against the applicant and exonerate the accused-applicant under section 386 I.P.C. The court has also found material evidence against the applicant under sections 387, 504 & 506 I.P.C. and passed order to frame charge under sections 387, 504 & 506 I.P.C. From perusal of order dated 08.01.2024, it is also apparent that charge was read before the accused-applicant and accused-applicant has denied the charges and request to face trial. Learned counsel for the informant also submitted that the submission of the applicant that he was not heard, is not sustainable because the order dated 05.01.2024 has been passed after hearing the accused persons and trial court has found that no offence under section 386 I.P.C. prima-facie made out against the applicant and the applicant was discharged under section 386 I.P.C. Submission of the applicant in regard to non-framing of charge under section 34 & 120-B I.P.C. is not material as not framing

charge under sections 34 & 120B I.P.C. would cause any prejudice. There has been no failure of justice against the applicant. Trial court while framing charge adjudicating discharge application heard the applicant and has found material evidence against the applicant on record and come to the conclusion that the accused-applicant committed offence under aforesaid section and framed the charge. Moreover, the applicant having criminal history which has not explained in the present case.

5. The Apex Court in **Onkar Nath Mishra and others v. State (NCT of Delhi) and another (2008) 2 SCC 561: (2008) Cri LJ 1391 (SC)**, while considering the nature of evaluation to be made by the Court at the stage of framing of charge, held thus:- *"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the Accused in respect of the commission of that offence."*

6. The Hon'ble Apex Court in **Darbara Singh vs. State of Punjab (2012)(10) SCC, Page 476**, held that the accused has to satisfy the court that if there is any defect in framing the charge which has prejudiced the cause of the accused, resulting in the fatal of the justice. It is only in that eventuality the court may interfere.

7. Considered the arguments raised by both the parties. From the record, it is apparent that the trial court perused the material available on record submitted by Investigating Officer, has found material evidence to frame the charge against the applicant under the aforesaid sections. Further the court has found no material evidence under section 386 I.P.C. and dropped the proceeding. The argument raised by the counsel that no charge has been framed under sections 34 & 120B I.P.C. on this part Court has found that non-framing of charge under sections 34 & 120B I.P.C. is causing any prejudice to the applicant. The trial court may consider it at the time of trial whether there is evidence in regard to section 34 & 120B I.P.C. for prosecuting the applicant. Moreover, accused was heard at length while deciding discharge application, the trial court

discussed everything in detail, thereafter framed the charge against the applicant. At this stage, order passed on 05.01.2024 rejecting the discharge application and order dated 08.01.2024 framing charge under aforesaid sections do not require interference. No interference is warranted. The present 482 application of applicant- **Shivesh Singh**, is hereby **dismissed** with the aforesaid observation.

Order Date :- 17.7.2025/SKD