

Court No. - 55

Case :- APPLICATION U/S 482 No. - 10573 of 2002

Applicant :- Firoz Ahmad Khan

Opposite Party :- State Of U.P.

Counsel for Applicant :- Shri Kant Shukla,V.C. Mishra

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Shashi Kant,J.

Heard Sri Shri Kant Shukla, learned counsel for the applicant, Sri Vishwa Jyoti Sahai, learned A.G.A. appearing for the State of U.P. and perused the record.

This application U/S 482 Cr.P.C. has been filed for quashing the Charge Sheet No. 391 dated 24.07.2002 (Annexure No. 2 to the affidavit) filed in Case Crime No. 359 of 2002, under Sections 419, 420, 467, 468 I.P.C., Police Station - Kotwali, District - Deoria and order dated 31.08.2002 (Annexure No. 3 to the affidavit) passed by the Chief Judicial Magistrate, Deoria, whereby cognizance on the aforesaid charge sheet has been taken by the court below.

Learned counsel for applicant urged that applicant was Government servant and was working as Marketing Inspector at Bhatpar Rani, Deoria. An F.I.R. was lodged against the applicant on 18.03.2002, as Case Crime No. 359 of 2002, under Sections 419, 420, 467, 468 I.P.C., alleging therein that he has supplied old rice to the F.C.I. godown at Sonughat, Deoria instead of new rice, hence he violated the Government Policy and Rules. The alleged offence was committed in connection with discharge of his official duties. For initiating criminal proceedings against the applicant no prior sanction was obtained from the competent authority. Learned counsel for applicant further urged that charge sheet had been filed in this case (Annexure No. 2 to the affidavit) against the applicant on which cognizance order was passed by the court below (Annexure No. 3 to the affidavit). He further urged that the cognizance order passed by the court below is bad in law as the same is barred by Section 197 Cr.P.C. In view of the above, the application deserves to be allowed and the impugned charge sheet as well as order dated 31.08.2002, are liable to be quashed.

Learned A.G.A. has opposed the above submissions advanced by learned counsel for the applicant by stating that the charge sheet against the applicant has been filed on the basis of sufficient evidence collected during course of investigation and

cognizance order passed thereon by the court below require no interference. however, he fairly conceded that no prior sanction from the competent authority has been obtained for prosecution of the applicant.

Consideration of the above referred rival submissions advanced by the learned counsel for the parties and perusal of record reveals that it is undisputed that applicant was a public servant, at the time of alleged incident and the alleged offence was closely connected with discharge of his official duties, there is no evidence/document on record to show that any prior sanction from the competent authority was obtained for initiating criminal prosecution against the applicant.

Prior to dwelling in the facts of the case, provisions of Section 197 Cr.P.C. may be usefully referred here which read thus:

"197. Prosecution of Judges and public servants. (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government."

A bare perusal of the provisions quoted above would go to show that Section 197 Cr.P.C. provides that when any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction. It is apparent from the record of the case that the impugned order taking cognizance is contrary to the provisions of Section 197 Cr.P.C.

In the case in hand, the applicant is a Government servant, the alleged offence is closely related with discharge of his official duties and no prior sanction was obtained from the competent

authority in order to initiate criminal proceedings against him, as desired under Section 197 Cr.P.C.

For the discussion made above, the impugned charge sheet as well as cognizance order passed by Chief Judicial Magistrate deserve to be quashed.

The application is accordingly **allowed**.

The impugned Charge Sheet No. 391 dated 24.07.2002 (Annexure No. 2 to the affidavit) filed in Case Crime No. 359 of 2002, under Sections 419, 420, 467, 468 I.P.C., Police Station - Kotwali, District - Deoria and cognizance order dated 31.08.2002 (Annexure No. 3 to the affidavit) passed by the Chief Judicial Magistrate, Deoria, on the aforesaid charge sheet, are hereby quashed.

Order Date :- 29.8.2017

A. Verma/Israr