

## **Court No. - 45**

**Case :- APPLICATION U/S 482 No. - 1100 of 2002**

**Applicant :-** Pravesh Kumar Srivastava & Others

**Opposite Party :-** State Of U.P. & Others

**Counsel for Applicant :-** K.N. Raha, A. Kumar Srivastava

**Counsel for Opposite Party :-** Govt. Advocate

### **Hon'ble Chandra Dhari Singh,J.**

The present application under Section 482 Cr.P.C. has been filed for quashing the charge-sheet and with the prayer to stay the entire proceedings of Case No. 196 of 2001 [State Vs. Dileep Srivastava and others] under Sections 325, 323, 504, 427 IPC and Section 3 (1)(10) of SC/ST Act, PS Suriyawan, District Sant Ravidas Nagar [Bhadohi] pending before the Ist Additional Judicial Magistrate, Sant Ravidas Nagar [Bhadohi].

Learned counsel appearing on behalf of the applicants has submitted that on 11.04.2001 a FIR was lodged against the applicants by opposite party no. 2 at police station Suriyawan, district Sant Ravidas Nagar [Bhadohi] under Sections 323, 504, 427 IPC and Section 3 (1)(10) of SC/ST Act and according to the which, on the date of incident when the informant was coming from Handia, applicants have stopped him and by using abusive words beaten them. Thereafter, the matter was investigated by the Investigating Officer and charge-sheet was submitted on 12.6.2001 under Sections 325, 323, 504, 427 IPC and Section 3 (1)(10) of SC/ST Act. On the basis of the said charge-sheet, the concerned court took cognizance on 12.06.2001 and summoned the accused vide order dated 17.09.2001.

Learned counsel for the applicants submits that in fact no offence against the applicants is disclosed and the present prosecution has been instituted with a malafide intention for the purposes of harassment due to enmity. Learned counsel submits

that the Investigating Officer has investigated the said case in a very casual and mechanical manner and without applying judicial mind the concerned court has taken cognizance on the same. Learned counsel submits that the real brother of the applicant no. 1 namely Sanjay Kumar Srivastava is the owner of bus no. U.P.-72-C-9672 and he has the permit to run the said bus in between Janghai to Varanasi and the opposite party no. 2 is the bus driver of bus no. MP-08-7203 and this bus was also running on the same route but without permit. Learned counsel submits that the brother of applicant no. 1 has made complaint to R.T.O. Office in this regard and on the said complaint R.T.O has taken necessary action against the bus owner of bus no. MP-08-7203 and the opposite party no. 2. Aggrieved against the same to settle the score opposite party no. 2 has lodged a false and fabricated FIR against the applicants. He further submitted that a bare perusal of the FIR as well as application for lodging the same, which is filed with supplementary affidavit as annexure no. SA-1 to the affidavit, clearly indicates that in the FIR neither the vehicle number disclosed nor any weapon shown in the hand of the accused person as well as motive of the alleged incident has also not been shown but in the statement under Section 161 CrPC first informant has disclosed the date of incident, time of incident, weapons shown in the hand of accused person, number of the bus as well as motive for the alleged incident, thus, it is clear that opposite party no. 2 has been forced by someone to implicate the applicants only to harass them.

The Investigating Officer has recorded the statements of Dr. B.C. Pathak and Dr. V.P. Singh and from the perusal of the said statements of the doctor it is very clear that on 11.04.2001 first informant appeared before the doctor on duty and made request for medical examination and as per Dr. V.P. Singh, Radiologist,

injured was appeared for X-ray and his X-ray report was prepared but it has never been stated therein that the injuries were bony injury and grievous in nature and the said injuries are one day old injuries. It is further submitted that as per injury report prepared by the doctor all the injuries were found at lower part of the leg and no injury found by the doctor in the upper part of the body which goes to indicate that injuries are manipulated and used as device against the applicants only to implicate in the present case.

Learned counsel lastly submits that the incident in question has taken place in the year 2001 and there is very remote chance of conviction of the applicants as the parties in dispute has settled the issues and they were not interested to further continue the said criminal proceedings. Learned counsel submits that all the applicants belong to one family and applicant nos. 2 and 3 were the students at the time of incident and preparing for competitive examination and only harass to them present proceedings have been initiated.

Per-contra learned AGA has vehemently opposed the submission advanced by learned counsel for the applicants by submitting that after perusal of the materials on record as collected by the Investigating Officer at the time of investigation learned court below after *prima facie* satisfaction has taken cognizance in the said case and issued summon order against the applicants to appear before the court and face the trial for the offence punishable under Sections 325, 323, 504, 427 IPC and Section 3 (1)(10) of SC/ST Act. Learned AGA further submitted that when the *prima facie* case is made out and materials/evidences are available on record against the applicants, this Court should not exercise its extraordinary jurisdiction under Section 482 CrPC in favour of the applicants.

I have heard learned counsel for the applicants, learned A.G.A. for the State and perused the record.

In the present case incident has taken place in the year 2001 and it is also clear from the record, as available, that the applicant no. 1 as well as opposite party no. 2 has some business rivalry and in this regard the real brother of applicant no. 1 has made a complaint and on the same action has been taken by the department concerned against opposite party no. 2 and to settle the score opposite party no. 2 has proceeded to lodge the FIR against applicant no. 1 and his other family members. Since the matter is very old about 17 years and it has been advanced on behalf of the applicants that parties in dispute has already entered into compromise and settled all the dispute and they do not want to continue the said litigation and they want to give quietus to the present criminal proceedings.

In view of the above facts and circumstances of the case I am of the considered opinion that the charge-sheet dated 12.6.2001 under Sections 325, 323, 504, 427 IPC and Section 3 (1)(10) of SC/ST Act, P.S. Suriyawan, District Sant Ravidas Nagar and the cognizance order dated 12.6.2001 are liable to be quashed.

Accordingly, the charge-sheet dated 12.6.2001 under Sections 325, 323, 504, 427 IPC and Section 3 (1)(10) of SC/ST Act, P.S. Suriyawan, District Sant Ravidas Nagar and the cognizance order dated 12.6.2001 taken by the Ist Additional Judicial Magistrate, Sant Ravidas Nagar [Bhadohi] are hereby quashed.

Application is allowed.

**Order Date :- 29.9.2018**  
Shekhar

**[Chandra Dhari Singh, J.]**