

Court No. - 71

Case :- APPLICATION U/S 482 No. - 38794 of 2019

Applicant :- Arvind Kushwaha And Another

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

Counsel for Applicant :- Om Prakash

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta,J.

Heard learned counsel for the applicants, learned AGA for the State and perused the record.

This application under Section 482 CrPC has been filed by the applicants with the prayer to quash the Charge-Sheet dated 18.05.2019 as well as entire criminal proceedings of Special Trial No.1282 of 2019, arising out of Case Crime No. 56 of 2019, under Sections 323, 504, 506, 341 IPC and Section 3(1) (Da), 3(1)(Dha) of SC/ST Act, Police Station Sadar Bazar, District Jhansi.

As per the allegations made in the FIR, it is alleged that on 24.04.2019 at about 9:30 AM, the applicants abused the victim with the name of his caste with an intention to humiliate and intimidate him and on being asked to refrain from abusing, the applicants assaulted the victim Nikki @ Nikhil by danda on his head, due to which, he suffered injuries on his person and has been medically examined.

Learned counsel for the applicant has submitted that from the perusal of the allegations made in the FIR and the material collected during the course of investigation, no offence is disclosed against the applicants and the present prosecution has been instituted with a malafide intention for the purposes of harassment. He has pointed out certain documents and statements in support of his contention.

Per contra, learned AGA has submitted that from the perusal of the allegations made in the FIR and the material collected during the course of investigation, prima facie offence is clearly made out against the applicants and as such, impugned charge-sheet cannot be quashed.

Moreover, all the submissions made at the bar relates to the disputed question of fact, which cannot be adjudicated upon by this Court under Section 482 CrPC. At this stage, only prima facie case is to be seen in the light of the law laid down by the Hon'ble Apex Court in the cases of **R.P. Kapur Vs. State of Punjab, AIR 1960 SC 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cri.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cri.) 192** and lastly **Zandu Pharmaceutical Works Ltd.**

Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.) 283. The disputed defence of the accused cannot be considered at this stage.

The prayer for quashing the charge-sheet and entire proceedings is therefore refused.

However, it is directed that if the applicants appear/surrender before the court below and apply for bail, their prayer for bail shall be considered and decided as expeditiously as possible after giving opportunity of hearing to both the parties.

With the aforesaid observations, this application under Section 482 CrPC is finally **disposed of**.

Order Date :- 31.10.2019

Nadim