

Court No. - 86

Case :- APPLICATION U/S 482 No. - 14575 of 2021

Applicant :- Sandeep @ Bijali

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Arun Kumar Tiwari

Counsel for Opposite Party :- G.A.

Hon'ble Umesh Kumar,J.

Heard learned counsel for the applicant and learned A.G.A.

This application under Section 482 Cr.P.C. has been filed with the prayer to quash the entire proceeding as well as non-bailable warrant dated 03.03.2020 passed by Additional District Judge, Court No. 07, Kanpur Nagar in S.T. No. 53 of 2019 under Sections 363, 366, 504, 506 of I.P.C. and 16/17 POCSO Act further court below to recall the warrant.

From the perusal of the material on record and looking into the facts and circumstances of the case. All the submission made at the Bar relates to the disputed question of fact, which cannot be adjudicated upon by this Court under Section 482 CR.P.C.

I have heard learned counsel for the applicant and learned AGA. and have gone through the materials available on record carefully and I do not find any substance in the arguments advanced by learned Counsel for the applicant.

Through a catena of decisions given by Hon'ble Apex Court this legal aspect has been expatiated upon at length and the law that has evolved over a period of several decades is too well settled. The cases of **(1) Chandra Deo Singh Vs. Prokash Chandra Bose AIR 1963 SC 1430**, **(2) Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker AIR 1960 SC 1113** and **(3) Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi 1976 3 SCC 736** may be usefully referred to in this regard.

The Apex Court decisions given in the case of **R.P. Kapur Vs. State of Punjab AIR 1960 SC 866** and in the case of **State of Haryana Vs. Bhajan Lal 1992 SCC(Cr.) 426** have also recognized certain categories by way of illustration which may justify the quashing of a complaint or charge sheet. Some of them are akin to the illustrative examples given in the above referred case of **Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi 1976 3 SCC 736**. The cases where the allegations made against the accused or the evidence collected by the Investigating Officer do not constitute any offence or where the allegations are absurd or extremely improbable impossible to believe or where prosecution is legally barred or where criminal proceeding is malicious and malafide instituted with ulterior motive of grudge and vengeance alone may be the fit cases for the High Court in which the criminal proceedings may be quashed. Hon'ble Apex Court in Bhajan Lal's case has recognized certain categories in which Section-482 of Cr.P.C. or Article-226 of the Constitution may be successfully invoked.

Illumined by the case law referred to herein above, this Court has adverted to the entire record of the case.

The submissions made by the applicant's counsel 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. But it shall suffice to observe that the perusal of the complaint, and also the material available on record make out a prima facie case against the accused at this stage and there appear to be sufficient ground for proceeding against the accused. I do not find any justification to quash the complaint or the summoning order or the proceedings against the applicant arising out of them as the case does not fall in any of the categories recognized by the Apex Court which may justify their quashing.

Needless to state that in the eventuality of surrendering and moving bail application by the applicant before competent Court of Jurisdiction, the Court below shall decide the same as expeditiously as possible in accordance with law, considering all aspects of the matter.

However, it is made clear that this Court has not expressed any opinion on the merits of the case and the competent Court below is to act, in accordance with law.

This application stands disposed off accordingly.

Order Date :- 31.8.2021//Fhd.