

Court No. - 86

Case :- APPLICATION U/S 482 No. - 9462 of 2022

Applicant :- Smt Pushpa Chaudhari And Another

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

Counsel for Applicant :- Shravan Kumar Pandey, Shyam Narain Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Gautam Chowdhary, J.

Heard learned counsel for the applicants and learned A.G.A. for the State.

The present 482 Cr.P.C. application has been filed praying for quashing the entire proceeding of Criminal Case No. 48593 of 2019 (State versus Smt. Pushpa Chaudhari & another), arose as Case Crime No. 428 of 2019, under Sections 323, 504, 506 I.P.C., Police Station-Barra, District-Kanpur Nagar pending before the learned Special Chief Judicial Magistrate, Kanpur Nagar as well as to quash the charge sheet dated 22.08.2019 filed in the aforesaid case as well as cognizance/summoning order dated 24.01.2020 passed in the aforesaid case.

The only argument raised by counsel for the applicant is that, it is not disputed that offence under Sections 323, 504 IPC is non-cognizable and the offence under Section 506 IPC was cognizable and non-bailable vide Uttar Pradesh Government Notification no. 777/VIII-94(2)-87 dated July 31, 1989. This notification issued by the government was held to be illegal by the Division Bench of this Court in the case of ***Virendra Singh and others vs. State of U.P. and others, 2000 vol. 45 ACC 609*** and so the position is that now the offence under Section 506 IPC is also a non-cognizable offence. It has been further argued that the offence under Sections 323, 504, 506 IPC, are non-cognizable so in view of the explanation to Section 2(d) Cr.P.C. the court below cannot proceed as State case and it can only be proceeded as complaint case and the person who has filed the report shall be treated to be complainant and the learned Magistrate erroneously passed an order treating it as State case.

In view of this, the offence under Section 323, 504, 506 IPC are non-cognizable so in view of the explanation of Section 2(d) of Cr.P.C. report of police officer after investigation regarding commission of non-cognizable offence shall be deemed to be complaint and the police officer who submitted the report shall be deemed to be the complainant. So the report submitted by the police officer in a non-cognizable offence only shall be

treated to be complaint and the procedure prescribed for hearing of complaint case shall be applicable to that case. In the present case according to the explanation of Section 2(d) of Cr.P.C. charge sheet submitted by the police under Section 323, 504, 506 IPC shall be treated as a complaint and it is to be decided as complaint. The learned Magistrate felt in legal error by taking cognizance as State case and the order passed by him is, therefore, liable to be set at rest.

Per contra learned AGA has contended that Section 506 IPC has been made cognizable and the vires of the amendment in Cr.P.C. making it cognizable has been upheld by a Full Bench of this Court in the case of ***Mata Sewak Upadhyaya vs. State of U.P. and others***, reported in ***1995 AWC 2031, 1996 All. JIC 107***. He further submitted that in view of this the judgment of ***Mata Sewak Upadhyaya*** delivered by the Full Bench has to be followed.

Taking note of the submissions of the counsel for the parties and having perused the material placed on record as well as the Division Bench judgment and Full Bench Judgment rendered by this Court, I find that the Division Bench of this Court in the aforesaid decision came to the conclusion that making section 506 IPC cognizable and non-bailable by the State Government through the above notification is illegal and Section 506 IPC has to be treated as bailable and non-cognizable offence for the reasons mentioned in the aforesaid judgment of the Division Bench declaring the above mentioned notification illegal.

However, the said notification dated 31.07.1989 of the State Government also considered by the Full Bench of this Court in the case of ***Mata Sewak Upadhyaya and another (supra)***. The Full Bench of this Court in the aforesaid judgment came to the conclusion that aforesaid notification dated 31.07.1989 is ultra-vires. The Full Bench of this court also considered the reasons for issuing such notification and also considered the compelling circumstances which necessitated the issuance of such notification.

Moreover, the Division Bench of this Court in criminal misc. writ petition no. 3251 of 2008, ***Ravi Prakash Khemka vs. State of U.P. and another*** decided on 23.05.2008 has been pleased to observe that 'in view of the matter the Full Bench judgment has to be followed'. Thus it is clear that there is contrary view of Full Bench and Division Bench of this Court while rendering the judgment in ***Virendra Singh (supra)***, judgment of ***Mata Sewak Upadhyaya (supra)*** appears that it was not placed before the Division Bench and hence it has no occasion to consider the same.

After advertng the above aspects and the sum and substance of the dictum of the Full Bench does not permit me to take different view except the view taken by Full Bench. Since the judgment of Full Bench of this Court rendered in the matter of ***Mata Sewak Upadhyaya (supra)*** was not placed before this Court, therefore, following the Division Bench, earlier orders had been passed for treating the case as complaint case in similar matter. However, in view of the Full Bench decision of this Court, aforementioned, I am of the opinion that once an FIR under section 506 IPC has been registered it is a cognizable and non-bailable offence, then the police has to investigate the case in the said FIR under Section 156(1) Cr.P.C. unless it decides otherwise under Section 157(1) Cr.P.C. and in the event charge sheet is filed and cognizance is taken by the court concerned, the magistrate had to proceed as a case arising out of charge sheet.

Accordingly, the reliefs as sought by the applicants is refused.

At this stage, the learned counsel for the applicants submits that the applicants have so far not been arrested in the above case and the police is seeking to arrest the applicants and there may be coercive processes issued against the applicants by the court concerned therefore, some direction may be issued to the court concerned for consideration of the bail prayer of the applicants.

As the Apex Court in ***Satendra Kumar Antil Vs. Central Bureau of Investigation and another (Special Leave to Appeal (Crl.) No. 5191 of 2021, decided on 07.10.2021)*** has already laid down guidelines for grant of bail, without fettering the discretion of the courts concerned and the statutory provisions governing consideration in grant of bail, no specific direction need be issued by this Court as it is expected that the court concerned will take into consideration the necessary guidelines already issued by the Apex court.

With the aforesaid observations, the application is disposed off.

Order Date :- 29.4.2022

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