

**Court No. - 82**

**Case :-** APPLICATION U/S 482 No. - 26426 of 2021

**Applicant :-** Mahendra And Another

**Opposite Party :-** State Of Up Through Secretary Home Affair  
U.P. And Another

**Counsel for Applicant :-** Abhishek Tiwari

**Counsel for Opposite Party :-** G.A.

**Hon'ble Umesh Kumar,J.**

Heard learned counsel for the applicants and learned A.G.A. appearing for State and perused the record.

This application under Section 482 Cr.P.C. has been filed with the prayer to quash charge sheet dated 24.12.2019, cognizance order dated 08.03.2021 passed by Additional Chief Judicial Magistrate-III, Ghaziabad as well as entire proceedings of Criminal Case No. 3110 of 2021 (State Versus Mahendra and another), arising out of Case Crime No. 356 of 2019, under Sections 504, 354, 354-B and 376/511 I.P.C., P.S.-Sihanigate, District-Ghaziabad.

From the perusal of the material on record and looking into the facts and circumstances of the case, I am of the considered view that prima facie offences are made out against the applicants. All the submissions made at the Bar relate to the disputed question of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C.

Similarly, while considering a prayer for quashing of charge sheet in application under Section 482 Cr.P.C., this Court also cannot examine any defence of accused, which has yet to be placed before Court below. Stage of placing defence of accused does not arise at the stage of charge sheet and, therefore, this Court also will not examine such defence at this stage.

Time and again it has been highlighted by Supreme Court that at the stage of charge sheet factual query and assessment of defence evidence is beyond purview of scrutiny under Section 482 Cr.P.C. The allegations being factual in nature can be decided only subject to evidence. In view of settled legal proposition, no findings can be recorded about veracity of allegations at this juncture in absence of evidence. Apex Court has highlighted that jurisdiction under Section 482 Cr.P.C. be sparingly/rarely invoked with complete circumspection and caution. Very recently in **Criminal Appeal No.675 of 2019 (Arising out of S.L.P. (Crl.) No.1151 of 2018) (Md. Allauddin Khan Vs. The State of Bihar & Ors.) decided on 15th April, 2019**, Supreme Court observed as to what should be examined by High Court in an application under Section 482 Cr.P.C. and in paras 15, 16 and 17 said as under :

"15. The High Court should have seen that when a specific grievance of the appellant in his complaint was that respondent Nos. 2 and 3 have committed the offences punishable under Sections 323, 379 read with Section 34 IPC, then the question to be examined is as to whether there are allegations of commission of these two offences in the complaint or not. In other words, in order to see whether any prima facie case against the accused for taking its cognizable is made out or not, the Court is only required to see the allegations made in the complaint. In the absence of any finding recorded by the High Court on this material question, the impugned order is legally unsustainable.

16. The second error is that the High Court in para 6 held that there are contradictions in the statements of the witnesses on the point of occurrence.

17. In our view, the High Court had no jurisdiction to appreciate

the evidence of the proceedings under Section 482 of the Code Of Criminal Procedure, 1973 (for short "Cr.P.C.") because whether there are contradictions or/and inconsistencies in the statements of the witnesses is essentially an issue relating to appreciation of evidence and the same can be gone into by the Judicial Magistrate during trial when the entire evidence is adduced by the parties. That stage is yet to come in this case." (Emphasis added)

Recently, above view has been reiterated by Apex Court in **Criminal Appeal No. 175 of 2020 (State of Madhya Pradesh Vs. Yogendra Singh Jadon and Another) decided on 31.01.2020.**

No material irregularity in the procedure followed by Court below has been pointed out. It is not a case of grave injustice justifying interference in this application at this stage.

In view thereof, I do not find any illegality or infirmity in charge-sheet or the order of cognizance.

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.

With the above observation, this application stands **disposed of.**

**Order Date :- 29.4.2022**

MN/-