

Court No. - 16

Case :- APPLICATION U/S 482 No. - 2933 of 2024

Applicant :- Phoolchandra

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And
Another

Counsel for Applicant :- Munni Lal

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed,J.

Heard Shri Munni Lal, learned counsel for the applicant, and the learned A.G.A.-I for the State.

This application under Section 482 Cr.P.C. has been filed by the applicant Phoolchandra against the impugned charge-sheet No. 02 dated 08.01.2021 and summoning order dated 03.01.2024 passed in Case No. 27140 of 2021, arising out of Case Crime No. 381 of 2020, under Sections 147, 148, 308, 323, 504, 506, 352 I.P.C., P.S. Chinhat, District Lucknow, which is pending before the Court of Addl. Chief Judicial Magistrate-III, Lucknow.

The contention of the learned counsel for the applicant is that no offence against the applicant is disclosed and the present prosecution has been instituted with a *mala fide* intention for the purposes of harassment.

After some arguments, learned counsel for the applicant confined his prayer to the extent that a positive direction may be given to learned trial court that if a bail-application is moved before it by the applicant, the same may be considered and decided expeditiously in accordance with law in the light of judgment of the Hon'ble the Supreme Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and others : (2021) 10 SCC 773**, as the punishment in the above case is less than seven years.

Learned A.G.A. has no objection to the prayer made by learned Counsel for the applicant and submits that a positive direction may be issued to the learned trial court to consider and decide the bail application, if moved before it by the applicant, expeditiously in accordance with law, after hearing the Public Prosecutor.

From perusal of the materials on record and looking into the facts of the case and after considering the arguments made at the bar, it does not appear that no offence is made out against

the applicant.

At the stage of issuing process the trial court is not expected to examine and assess in detail the material placed on record, only this has to be seen whether *prima facie* cognizable offence is disclosed or not. The Apex Court has also laid down the guidelines where the criminal proceedings could be interfered and quashed in exercise of its power by the High Court in the following cases:-(i) **R.P. Kapoor Vs. State of Punjab, AIR 1960 S.C. 866**, (ii) **State of Haryana Vs. Bhajanlal, 1992 SCC (Crl.)426**, (iii) **State of Bihar Vs. P.P. Sharma, 1992 SCC (Crl.)192** and (iv) **Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.)283**.

From the aforesaid decisions the Apex Court has settled the legal position for quashing of the proceedings at the initial stage. The test to be applied by the court is to whether uncontroverted allegation, as made, *prima facie* establishes the offence and the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing criminal proceedings to continue. In **S.W. Palankattkar & others Vs. State of Bihar, 2002 (44) ACC 168**, it has been held by the Hon'ble Apex Court that quashing of the criminal proceedings is an exception than a rule. The inherent powers of the High Court under Section 482 Cr.P.C itself envisages three circumstances under which the inherent jurisdiction may be exercised:-(i) to give effect an order under the Code, (ii) to prevent abuse of the process of the court ; (iii) to otherwise secure the ends of justice. The power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

The High Court would not embark upon an inquiry as it is the function of the Trial Judge/Court. The interference at the threshold of quashing of non-bailable warrant/ criminal proceedings in case in hand cannot be said to be exceptional as it discloses *prima facie* commission of an offence. In the result, the prayer for staying the execution of summoning order/criminal proceeding, is refused. There is no merit in this case. The applicant has ample opportunity to raise all the objections at the appropriate stage.

In view of the submissions made by learned Counsel for the parties, if the applicant appears and surrenders before the trial court and apply for bail within four weeks' from today, the prayer for bail shall be considered and decided expeditiously by the trial court in accordance with law after hearing the Public Prosecutor in light of judgment of Hon'ble Supreme Court in

the case of **Satender Kumar Antil (Supra)**.

With the aforesaid observations, this application is finally **disposed of**.

The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad or certified copy issued from the Registry of the High Court, Allahabad.

The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

(Shamim Ahmed, J.)

Order Date :- 29.3.2024
A.Nigam