

Court No. - 27

Case :- APPLICATION U/S 482 No. - 5212 of 2024

Applicant :- Sagar Upadhyay

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.
And 2 Others

Counsel for Applicant :- Divya Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed,J.

Heard Ms. Divya Tripathi, learned counsel for the applicant as well as Ms. Ankita Tripathi, learned A.G.A. for the State and perused the record.

The instant Application under Section 482 Cr.P.C. has been moved by the applicant with a prayer to quash the impugned charge sheet dated 09.06.2022 and entire proceeding of Case Crime No.102/2022, under Section 406, 504 and 506 I.P.C., Police Station-Vibhuti Khand, District-Lucknow pending in the court of learned Additional Chief Judicial Magistrate-II, Lucknow and impugned Non Bailable Warrant order dated 29.02.2024 passed by learned Additional Chief Judicial Magistrate-II, Lucknow.

Learned counsel for the applicant submits that the applicant is a reputed person in the society and he has been falsely implicated in the present case due to rivalry. He further submits that the impugned proceedings pending before the learned trial court are totally arbitrary and illegal and the same have been instituted without considering the material evidence available on record. Thus, he submits that entire criminal proceedings initiated against the applicant may be quashed.

Learned counsel for the applicant also prays for permission to appear through counsel before the concerned trial court within a period of three weeks from today and move an application claiming discharge on behalf of the applicant and this Court may direct the trial court to decide the application so moved by the applicant.

Learned A.G.A. has disputed the aforesaid contentions made by learned counsel for the applicant but he has not opposed the request made by learned counsel for the applicant to move a discharge application before the trial court through counsel.

All the contentions raised by the applicant's counsel relate to disputed questions of fact. The court has also been called upon to adjudge the testimonial worth of prosecution evidence and evaluate the same on the basis of various intricacies of factual details which have been touched upon by learned counsel. The veracity and credibility of material furnished on behalf of the prosecution has been questioned and false implication has been pleaded. In the process of invoking its inherent jurisdiction, this court cannot be persuaded to have a pre trial before the actual trial begins. The submissions made by the learned 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.

The quashing of the charge sheet and the entire proceedings can also be done only if it does not disclose any offence or if there is any legal bar which prohibits the proceedings on its basis. The Apex Court decisions in the case of **R.P. Kapur Vs. State of Punjab AIR 1960 SC 866**, **State of Haryana Vs. Bhajan Lal 1992 SCC(Cr.) 426**, **State of Bihar Vs. P.P. Sharma, 1992 SCC (Cri.) 192** and also in **Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.) 283** make the position of law in this regard clear.

In the absence of any of the grounds recognized by the Apex Court which might justify the quashing of charge sheet/summoning order/impugned proceedings, the prayer for quashing the same is refused as I do not see any abuse of the courts process either. The trial court has been vested with sufficient powers to discharge the accused even before the stage to frame the charges comes, if for reasons to be recorded it considers the charge to be groundless.

As requested by learned counsel for the applicant, the permission to appear through counsel before the concerned trial court within a period of three weeks from today and move an application claiming discharge on behalf of whom this application under Section 482 Cr.P.C. has been moved, is granted. The concerned trial court shall after hearing the counsel decide the application on merits in accordance with law within a period which shall not exceed a period of two months from today.

With the above observations, this application under Section 482 Cr.P.C. stands **disposed of**.

Order Date :- 31.5.2024

Piyush/-