

Court No. - 79

Case :- APPLICATION U/S 482 No. - 20144 of 2007

Applicant :- Nakli Singh

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

Counsel for Applicant :- Onkar Singh

Counsel for Opposite Party :- Govt. Advocate, Sushil Kumar Pandey

Hon'ble Saumitra Dayal Singh, J.

1. List revised. Heard Sri Onkar Singh, learned counsel for the applicant and learned AGA for the State. None appears on behalf of the complainant though Sri Sushil Kumar Pandey, Advocate, has filed his appearance on his behalf and also filed counter affidavit.

2. Present application has been filed to quash the summoning order dated 27.06.2007 as well as the Complaint Case No. 60/9 of 2007 (Naseen Vs. Gyani & Ors.), under Section 500 IPC, pending in the court of Civil Judge (Jr. Div.)-I, Muzaffarnagar.

3. Submission of learned counsel for the applicant is two fold. First, it has been submitted, the statements that forms subject matter of allegation of defamation, was recorded in the course of a criminal investigation in Case Crime No. 558 of 2006. In that case, the applicant is listed as a prosecution witness against the complainant Naseem. The said case was pending on the date of institution of the present complaint. Therefore, allegation of defamation may not arise at such preliminary stage. By way of second limb of that submission, it has been submitted that in any case, the statement made by the witness in the course of investigation made never constitute the offence of defamation. Then, it has been submitted that the affidavits that allegedly form the subject matter of the complaint have not been brought on record. Though the applicant had clearly stated in the affidavit

filed in support of the present application that those affidavits were not available to him yet, the opposite party no.2/complainant has not brought the same on record alongwith his counter affidavit.

4. Referring to the statement of the applicant recorded in Case Crime No. 558 of 2006 (Annexure No.5 to the affidavit filed in support of the present application), it is submitted that the applicant had only stated that the said Naseem had close relationship with Sanyogita wife of Sompal. He nowhere stated that Naseem had formed illicit relationship with Sanyogita.

5. On the other hand, learned AGA would submit, all pleas would be available to the applicant at the trial and no interference is warranted at this stage.

6. Having heard learned counsel for the parties and having perused the record, in the first place, it is undisputed that the statement made by the applicant was in the course of an inquiry by the police in Case Crime No. 558 of 2006 wherein the complainant - Naseem is an accused person. That case was pending on the date of complaint being lodged. For that reason, the application appears to be pre-mature in the peculiar facts of the present case.

7. Even otherwise, without expressing any definite opinion if the statement on oath alleged to have been made by the applicant would constitute the ingredients of defamation as such statement was made during a lawful proceeding, the copy of the statement recorded under Section 161 Cr.P.C. does appear to suggest that the applicant had only stated that the complainant Naseem had a close relationship with Sanyogita. In itself that may

never be enough to constitute the offence of defamation.

8. That statement may be factually wrong but it can never be read as an imputation with intent to harm the reputation of Naseem. The fact that Sanyogita and Naseem belong to opposite gender, would not be relevant for the purpose of completion of the ingredients of the offence alleged. Being close to someone in a natural or normal human relationship and to form an illicit relationship are two completely different things.

9. Whether the applicant had made further or other imputation in the affidavit relied upon in the complaint is not clear inasmuch as though the applicant had stated he did not have available copies of such affidavits, the complainant has not helped the matter by not bringing the same on record though he has filed the counter affidavit.

10. In the above circumstance, it appears, no useful purpose would be served in allowing such a vague prosecution to continue, any further.

11. In the entirety of facts and circumstance, present application is **allowed**. The summoning order dated 27.06.2007 as well as the Complaint Case No. 60/9 of 2007 (Naseem Vs. Gyani & Ors.), under Section 500 IPC, pending in the court of Civil Judge (Jr. Div.)-I, Muzaffarnagar are quashed.

Order Date :- 8.11.2021

Abhilash