

Court No. - 87

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Case :- APPLICATION U/S 482 No. - 22897 of 2021

Applicant :- Arun Kumar Jaiswal

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

Counsel for Applicant :- Brijesh Ojha

Counsel for Opposite Party :- G.A.

Hon'ble Anil Kumar Ojha, J.

Heard learned counsel for the applicant, learned counsel for opposite party no. 2, learned AGA for the State for the State and perused the record.

This application under Section 482 Cr.P.C. has been filed by the applicant with the prayer to quash the impugned charge-sheet No. 50/2019, dated 23.02.2019, cognizance order dated 12.08.2020 as well as entire proceedings of Case No. 2920 of 2020 (State vs. Arun Kumar Jaiswal), arising out of case Crime No. 0504 of 2018, under Section 501 IPC and Section 66 Information Technology (Amended) Act, 2008, Police Station Sarai Akil, District Kaushambi, pending in the court of Chief Judicial Magistrate Kaushambi.

Submission of learned counsel for the applicant is that the applicant has not committed the alleged offences. Applicant has been falsely implicated. Offences under sections 501 IPC and Section 66 Information of Technology (Amended) Act, 2008, are not made out against the applicant. Learned court below has taken cognizance on 12.08.2020 without applying judicial mind. Hence, in the interest of justice, this petition has been filed.

Per contra learned AGA opposed the prayer for quashing the proceeding.

In ***M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and others 2020 SCC Online SC 85***, the Hon'ble Apex Court has held as under:-

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/ complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made

vi) *Criminal proceedings ought not to be scuttled at the initial stage;*

vii) *Quashing of a complaint/FIR should be an exception rather than an ordinary rule.*

Following other authorities can be cited on the aforesaid point:
R. P. Kapur vs. The State Of Punjab, AIR 1960 SC 866, State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604.

Perusal of the record reveals that Investigating Officer collected the evidence and concluded the investigation and submitted the charge-sheet against the applicant under Section 501 I.P.C. and Section 66 I.T. Act. Perusal of the record further discloses that concerned Magistrate has taken cognizance in the matter.

In proceeding under Section 482 Cr.P.C., this Court cannot adjudicate upon the reliability of witnesses. Whether by alleged Facebook Post, image of Sri Kashav Prasad Maurya, Deputy Chief Minister, Sri Nand Gopal "Nandi", Minister, Sri Vinod Sonkar, Member of Parliament, Kaushambi, Sri Sanjay Gupta, Member of Lagislative Assembly, Chayal, Sri Lal Bahadur Yadav, Member of Lagislative Assembly, Manjhanpur and Sri Seetla Prasad, Member of Lagislative Assembly, Sirathu, has been tarnished or not, is a question of fact which has to be decided by the trial court during trial.

In view of the above, the prayer for quashing the proceedings is **refused.**

Learned counsel for the applicant requested that order may be passed for expeditious disposal of bail application.

In view of the above, it is provided that if the applicant appears and surrenders before the court below and applies for bail, his prayer for bail be considered and decided in view of the law laid down in ***Brahm Singh and others vs. State of U.P. and others 2016 (95) ACC950.***

With the aforesaid direction, this application is finally disposed of.

Order Date :- 6.1.2022/v.k.updh.