

Court No. - 83

Case :- APPLICATION U/S 482 No. - 17176 of 2020

Applicant :- Mohd. Saad

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

Counsel for Applicant :- Javed Habib

Counsel for Opposite Party :- G.A.

Hon'ble Ajay Bhanot,J.

Heard Sri Javed Habib, learned counsel for the applicant and learned A.G.A for the State.

Learned counsel for the applicant is directed to impleade Director General of Police,U.P., Senior Superintendent of Police,Mau and Circle Officer as respondents No. 3, 4 and 5.

Sri Javed Habib learned counsel for the applicant contends that the prosecution case in the FIR asserts that the applicant had visited a religious congregation organized by Tabligi Jamat at New Delhi. The prosecution story in the FIR as well as the charge sheet is that the applicant and other accused returned home on different dates. However, they did not intimate the administration about their arrival and did not go under voluntary quarantine. They did not get themselves medically examined. After disclosing the names of four such persons, the prosecution story unfolds further with a recital that on information received from an informant the aforesaid persons were quarantined on different dates. The aforesaid persons went to Delhi knowing fully well that Corona Virus had been declared as a pandemic and a large number of persons at the Markaz congregation at New Delhi were infected. The said persons concealed their visit to Delhi and deliberately indulged in negligent and condemnable acts. The charge-sheet has been submitted against the applicant under Sections 307 and 270 IPC.

Upon examination the applicant had tested negative.

Learned counsel for the applicant Sri Javed Habib contends that even if evidence collected during the investigation as well as the FIR are taken on their face value (though denied as incorrect), no offence is disclosed against the applicants.

Learned A.G.A submits that the learned Magistrate has not taken cognizance of the offence under Section 307 IPC against the applicant. All these facts may be collected while filing the counter affidavit.

Rejoining the issue Sri Jawed Habib, learned counsel for the applicant contends that though the original charge sheet was drawn up under Section 269, 270 IPC and even presented to the court. However, the same was recalled and fresh charge sheet was submitted under Section 307 IPC on orders passed by C.O. The order passed by C.O. is filed as annexure-6.

From a perusal of the material, charge sheeting the applicant under Section 307 IPC prima facie reflects abuse of the power of law.

S.S.P. to file his personal affidavit in the matter.

C.O. shall also file his personal affidavit indicating as to how the ingredients of Section 307 IPC are made out from the facts in the record from the material collected during the investigation and justify the amendment directed by him to the charge sheet.

Matter needs consideration.

Learned A.G.A is granted ten days to file counter affidavit.

Two days for rejoinder affidavit.

Put up on 15.12.2020 in the list of fresh cases.

Till further orders, further proceedings of Criminal Case no. 40 of 2020 (State Versus Mohd. Sad) Case Crime No. 0208 of 2020 under Sections 307, 270 I.P.C., Police Station Kotwali District Mau pending in the court of Juvenile Justice Board, Mau shall remain stayed.

Order Date :- 2.12.2020

Nadeem Ahmad