

A.F.R.

Court No. - 11

Case :- APPLICATION U/S 482 No. - 4695 of 2023

Applicant :- Suresh Kumar Singh

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Home, Lko. And Another

Counsel for Applicant :- Janardan Singh, Madan Gopal Tripathi

Counsel for Opposite Party :- G.A., Vishva Nath Pratap Singh

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Mr. Madan Gopal Tripathi, learned counsel for the applicant, Mr. Anirudh Kumar Singh, learned A.G.A.-I appearing for the State and Mr. Vishva Nath Pratap Singh, learned counsel for the opposite party no.2.

2. The instant application under Section 482 Cr.P.C has been filed by the applicant to set aside the impugned order dated 12.04.2023 passed by Additional Session Judge, (P.O.C.S.O.-I), Ambedkar Nagar in Session Trial No.23 of 2020 under Section 363, 366 & 376 I.P.C. at Police Station- Ahirauli, District- Ambedkar Nagar.

3. Learned counsel for the applicant has contended that despite the fact that the applicant was not named in the F.I.R. nor in the charge-sheet though on the application of the complainant filed under Section 319 Cr.P.C. (Annexure No.19), the learned trial Court summoned the applicant vide order dated 20.08.2015.

4. Learned counsel for the applicant has informed the Court that challenging the order dated 20.08.2015, the applicant has filed a petition before this Court i.e. U/S 482/378/407 No.2023 of 2019 (*Suresh Singh Vs. State of U.P. and Another*) and this Court vide order dated 14.03.2019 granted liberty to the applicant therein to file a discharge application before the Court concerned. In compliance of the aforesaid order dated 14.03.2019, the applicant filed discharge application before the learned trial Court and that application was rejected by the learned trial Court vide impugned order dated 12.04.2023.

5. Learned counsel for the applicant further submitted that in the meantime, the applicant appeared before the learned trial Court and he has been enlarged on bail.

6. Learned counsel for the applicant has contended that by means of impugned order dated 12.04.2023, the learned trial Court has observed that in view of the dictum of the Hon'ble Apex Court in re: **Jogender Yadav Vs. State of Bihar & Ors., reported in 2015 ALL-MR (Cri).3707 (SC)**, the application for discharge under Section 227 Cr.P.C. is not maintainable, therefore, the same has been rejected.

7. Learned counsel for the applicant has referred the dictum of the Hon'ble Apex Court in re: **Hardeep Singh Vs. State of Punjab & Others, (2014) 3 SCC 92** to submit that the power to summon under Section 319 Cr.P.C should be invoked by the trial Court sparingly in as much as exercise of power under Section 319 Cr.P.C is placed on higher pedestal. He has further submitted that if there being no cogent material/evidence is available on record against the person, he/she should not be summoned under Section 319 Cr.P.C.

8. Learned counsel for the applicant has also placed reliance upon the judgment and order dated 16.1.2019 passed by the Division Bench of this Court in Misc. Bench No.28660 of 2018 (*Haider Ali Vs. State of U.P. and other*), whereby, the Division Bench of this Court has followed the various dictum of the Hon'ble Apex Court as well as of the Privy Council. The Division Bench has referred the judgement in re: **Bhuboni Sahu Vs. King, AIR 1949 PC: (1949) Cri LJ 872**, wherein, the Privy Council has held that the statement made under Section 164 Cr.P.C. can never be used as substantive evidence of the fact stated but it can be used to support or challenge evidence given in Court by the person who made his statement.

9. Therefore, in view of the aforesaid judgement, the learned counsel for the applicant has stated that the application under Section 319 Cr.P.C was allowed only for the reasons that during the course of investigation, the prosecutrix had recorded her statement under Section 164 Cr.P.C. wherein she had levelled allegations against the present applicant. So, on the basis of such statement of the prosecutrix, the application under Section 319 Cr.P.C. should not have been allowed at that stage of the trial.

10. Per contra, Mr. Anirudh Kumar Singh, learned A.G.A.-I has submitted that the law relating to Section 319 Cr.P.C. has been developed by the Hon'ble Apex Court firstly, in **Hardeep Singh (supra)** and later on in re: **Yashodhan Singh and Others Vs. State of U.P. and Another, (2023) 9 SCC 108**. In the judgement of **Yashodhan Singh (supra)**, the details of **Hardeep Singh (supra)**, **Sukhpal Singh Khaira Vs. State of Punjab, (2023) 1 SCC 289: (2023) 1 SCC (Cri) 454, Brijendra**

Singh Vs. State of Rajasthan, (2017) 7 SCC 706 : (2017) 4 SCC (Cri) 144 and Dharam Pal Vs. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159 have been followed.

11. Mr. Anirudh Kumar Singh, learned A.G.A.-I has further submitted that he is unable to comprehend as to why the Investigating Officer has not filed charge-sheet against the present applicant when there was the statement of the prosecutrix recorded under Section 164 Cr.P.C. wherein, she has levelled specific allegations against the present applicant. He has further submitted that on the basis of statement of the prosecutrix recorded under Section 164 Cr.P.C, the present applicant could have been summoned under Section 319 Cr.P.C.

12. Mr. Anirudh Kumar Singh, learned A.G.A.-I referring to the aforesaid judgement has stated with vehemence that this has been the consistent view of the Hon'ble Apex Court that the persons who are not named in the F.I.R. nor named in the charge-sheet or who have been discharged before framing of the charges may be summoned under Section 319 Cr.P.C.

13. Having considered the material placed on record and having regard to the dictum of the Hon'ble Apex Court (*supra*), I am of the considered opinion that if the learned trial Court finds it necessary during the course of trial that any person who was not named in the F.I.R. or was also not named in the charge-sheet but there are some material/evidence to suggest that he/she is also responsible in committing such offence, he/she may be summoned under Section 319 Cr.P.C. It is trite that there is no finality attached to Section 319 Cr.P.C. Further, it is also trite that exercise of power under Section 319 Cr.P.C. must be placed on higher pedestal. The accused summoned under Section 319 Cr.P.C. are entitled to invoke the remedy under the law against an illegal and improper exercise of power under Section 319 Cr.P.C but that cannot have the effect of the order being undone by seeking a discharge under Section 227 Cr.P.C., therefore, the Hon'ble Apex Court in re: **Jogendra Yadav** (*supra*) has held that a person, who is summoned under Section 319 Cr.P.C. cannot avail the remedy of discharge under Section 227 Cr.P.C.

14. In the present case, the petitioner has been summoned under Section 319 Cr.P.C. for the reason that the prosecutrix had levelled specific allegation against the petitioner while recording her statement under Section 164 Cr.P.C. during course of investigation, hence, I do not find any infirmity or illegality in the impugned order dated 12.04.2023 whereby the discharge application of the petitioner has been rejected in view of dictum of Apex Court in re: **Jogendra Yadav** (*supra*).

15. At this stage, learned counsel for applicant has confined his prayer to the effect that the non-bailable warrant which has been issued against the applicant vide order dated 10.01.2024 may be kept in abeyance and he shall participate in the proceedings. He has also submitted that the applicant has already been enlarged on bail and due to inadvertence and compelling circumstances, he could not appear before the Court concerned, therefore, the Court has issued non-bailable warrant dated 10.01.2024.

16. Considering the aforesaid submissions advanced by learned counsel for the parties and without interfering the impugned order dated 12.04.2023, I hereby **disposed of** this instant application filed under Section 482 Cr.P.C., finally, at the admission stage giving liberty to the applicant/petitioner to appear before the Court concerned on the date fixed i.e. 08.02.2024 to participate in the proceedings and he shall further participate in the proceedings and shall not take unnecessary adjournments.

17. If the applicant appears before the learned trial Court on 08.02.2024 i.e. the date fixed, the non-bailable warrant dated 10.01.2024 shall not be executed against him. In case, the applicant does not appear before the Court concerned on the date fixed, the learned trial Court would be at liberty to take steps against him strictly in accordance with law.

18. It is needless to say that the learned trial Court shall expedite the trial proceedings strictly in accordance with law by affording opportunity of hearing to all the parties concerned.

[Rajesh Singh Chauhan,J.]

Order Date :- 2.2.2024

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