

Court No. - 83

Case :- APPLICATION U/S 482 No. - 1368 of 2016

Applicant :- Mulayam Singh And 4 Others

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

Counsel for Applicant :- Ashok Trivedi

Counsel for Opposite Party :- G.A., Jaysingh Yadav

Hon'ble Gautam Chowdhary, J.

None appeared on behalf of private opposite parties.

After perusing the record it transpires that on several dates learned counsel for the private opposite parties is not present. It appears that the private opposite parties do not want to contest the case.

The present application u/s 482 Cr.P.C. has been filed with the prayer to quash the complaint dated 13.11.2014 and summoning order dated 28.01.2015 passed by Additional Sessions Judge/Special Judge, Docaity Affected Area Act, 1983) in Criminal Complaint Case No. 199 of 2014 (S.S.T. No. 16 of 2015) under Sections 395 read with 397 IPC.

Heard learned counsel for the applicants as well as the learned AGA.

It is submitted by the learned counsel for the applicants that initially an N.C.R. was lodged on behalf of opposite party no. 3 for the same incident but nothing was mentioned in the report about the offence under Section 395 IPC. False allegations have been levelled against the applicants in the present complaint. It is further submitted that applicants had moved an application on 18.09.2014 before the concerned S.H.O. prior to lodging of the N.C.R. and the applicants had also moved an application before the competent authority, but no action was taken. It is also submitted that the opposite party no. 3 had filed the present complaint to harass the applicants and to put pressure upon the applicants. It is lastly contended that the Magistrate has not applied his judicial mind while passing the summoning order. Learned counsel for applicant has lastly submitted that impugned summoning order is not sustainable in view of the fact that it is not clear as to how the Sessions Judge has recorded his satisfaction in respect of the complaint.

After perusing the materials on record and also considering the submissions made by the learned counsel for the applicants, this Court is of the opinion that the learned Sessions Judge was

required to at least mention in the order about the prima facie satisfaction for summoning the accused. The order must reflect that the learned Sessions Judge has exercised his jurisdiction in accordance with law after satisfying himself about the prima facie allegations made in the complaint. The accused cannot be summoned mechanically merely on the ground of the statements recorded under Sections 200 and 202 Cr. P. C. In impugned order there is nothing which may indicate that learned Sessions Judge had even considered facts of the case in hand before passing the summoning order. Impugned order clearly lacks the reflection of application of judicial discretion or mind. Nothing is there which may show that learned Magistrate, before passing of the order under challenge had considered facts of the case and evidence or law. Therefore it appears that, in fact, no judicial mind was applied before the passing of impugned order of summoning. Such order cannot be accepted as a proper legal judicial order passed after following due procedure of law.

Accordingly, the present 482, Cr.P.C. application succeeds and is allowed. The summoning order dated 28.01.2015 passed by the Additional Sessions Judge/Special Judge, Docaity Affected Area Act, 1983) in Criminal Complaint Case No. 199 of 2014 (S.S.T. No. 16 of 2015) under Sections 395 read with 397 IPC is set aside. The Court below shall pass a fresh order in the light of the observations made herein above.

Order Date :- 8.8.2022

Ashish