

Court No. - 15

Case :- APPLICATION U/S 482 No. - 9892 of 2022

Applicant :- Dhanesh Kumar @ Dhanesh Kumar Mishra

Opposite Party :- State Of U.P. Thru. Prin. Secy. (Home) Lko. And Another

Counsel for Applicant :- Abhishek Mishra, Prashant Shukla

Counsel for Opposite Party :- G.A., Ajay Kumar

Hon'ble Subhash Vidyarthi, J.

Heard Sri Prashant Shukla and Sri Abhishek Mishra, learned counsel for the applicants, Sri Tilak Raj Singh, AGA-I, learned Addl. Government Advocate for the State and Sri Ahay Kumar, learned counsel for the informant/opp. party no. 2.

By means of the instant application the applicant is seeking quashing of the chargesheet dated 11.7.2020 bearing Chargesheet No. 01 filed in Case Crime No. 0070 of 2019 under sections 308, 323, 324, 325 and 506, I.P.C. and the summoning order dated 26.8.2020 passed by the Judicial Magistrate, Ambedkar Nagar, and the consequential order dated 05.12.2022 issued by the Judicial Magistrate-II, Ambedkar Nagar, issuing non-bailable warrants against the applicant as also all the proceedings of Criminal Case No. 770 of 2019 pending before the Judicial Magistrate-II, Ambedkar Nagar.

The present proceedings were initiated by lodging an F.I.R. on 21.3.2019 bearing Case Crime No., 0070 of 2019 against five persons, including the applicant, alleging that the five accused persons had attacked the informant and his father. The F.I.R. alleges that the co-accused Devvrat was carrying a Farsa and countrymade pistol and the co-accused Ramesh Kumar was carrying a Farsa and all the other accused persons were carrying sticks.

After investigation the Police submitted a chargesheet on 11.7.2020 only against Devvrat Mishra, Ramesh Kumar Mishra and the applicant and the allegations against rest of the two co-accused persons could not be established. On 26.8.2020 the Judicial Magistrate, Ambedkar Nagar, has passed an order summoning the accused persons to face trial of Case Crime No. 0070 of 2019 under sections 323, 324, 325, 506 and 308 I.P.C., P.S. Jahangirganj, District Ambedkar Nagar, in Criminal Case No. 849 of 2020.

While assailing the aforesaid order the learned counsel for the applicant has submitted that the order has been passed on a printed proforma by filling up the names of the accused

persons, the sections and the Case Crime Number in the blank spaces. The counsel has relied upon a decision of Hon'ble the Supreme Court in ***Darshan Singh Ram Kishan v. State of Manarashtra*** reported in **(1971)2 SCC 654**, wherein the Hon'ble Supreme Court has been pleased to hold as follows:

"8. As provided by Section 190 of the Code of Criminal Procedure, a Magistrate may take cognizance of an offence either, (a) upon receiving a complaint, or (b) upon a police report, or (c) upon information received from a person other than a police officer or even upon his own information or suspicion that such an offence has been committed. As has often been held, taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a police officer. Therefore, when a Magistrate takes cognizance of an offence upon a police report, prima facie he does so of the offence or offences disclosed in such report."

He also relied upon a decision of Hon'ble the Supreme Court in ***Sunil Bharti Mittal v. Central Bureau of Investigation, AIR 2015 SC 923***, wherein the Hon'ble Court held as follows:

"47. However, the words "sufficient grounds for proceeding" appearing in the Section are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself.."

In ***Ankit v. State of U.P. & anr., 2009 (9) ADJ 778***, this court held as under:

*"10. Below aforesaid sentence, the seal of the Court containing name of Sri Talevar Singh, the then Judicial Magistrate-III, has been affixed and the learned Magistrate has put his short signature (initial) over his name. The manner in which the impugned order has been prepared shows that the learned Magistrate did not at all apply his judicial mind at the time of passing this order and after the blanks were filled up by some employee of the Court, he has put his initial on the seal of the Court. This method of passing judicial order is wholly illegal. If for the shake of argument, it is assumed that the blanks on the printed proforma were filled up in the handwriting of learned Magistrate, even then the impugned order would be illegal and invalid, because order of taking cognizance or any other judicial order cannot be passed by filling up blanks on the printed proforma. Although as held by this Court in the case of *Megh Nath Gupta v. State of U.P.*, [2008 (62) ACC 826.] in which reference has been made to the cases of *Deputy Chief Controller Import and Export v. Roshan Lal Agrawal*, [2003 (46) ACC 686 (SC).] *U.P. Pollution Control Board v. Mohan Meakins*, [(2000) 3 SCC 745 : AIR 2000 SC 1456.] and *Kanti Bhadra v. State of West Bengal*, [2000 (40) ACC 441 (SC).] the Magistrate is not required to pass detailed reasoned order at the time of taking cognizance on the charge-sheet, but it does not mean that order of taking cognizance can be passed by filling up the blanks on printed proforma. At*

the time of passing any judicial order including the order taking cognizance on the charge-sheet, the Court is required to apply judicial mind and even the order of taking cognizance cannot be passed in mechanical manner. Therefore, the impugned order is liable to be quashed and the matter has to be sent back to the Court below for passing fresh order on the charge-sheet after applying judicial mind."

Relying upon the aforesaid decisions this court in ***Virendra Kumar Bajpai v. State of U.P., Application under section 482 Cr.P.C. No. 7972 of 2022***, decided on **10.11.2022** has held that use of blank printed proforma for passing judicial order indicates non-application of judicial mind while passing a summoning order and such an order cannot be sustained in law.

In view of the aforesaid circumstances, I am of the view that the impugned summoning order is unsustainable in law. The present application under section 482, Cr.P.C. is **allowed**.

The chargesheet dated 11.7.2020 bearing Chargesheet No. 01 filed in Case Crime No. 0070 of 2019 under sections 308,323,324,325 and 506, I.P.C. and the summoning order dated 26.8.2020 passed by the Judicial Magistrate, Ambedkar Nagar, and the consequential order dated 05.12.2022 issued by the Judicial Magistrate-II, Ambedkar Nagar, issuing non-bailable warrants against the applicant as also all the proceedings of Criminal Case No. 770 of 2019 pending before the Judicial Magistrate-II, Ambedkar Nagar, are hereby **quashed**.

The learned court concerned will be at liberty to pass a fresh order in accordance with law after due application of mind to the material placed before him.

Order Date :- 4.1.2023

A.Nigam