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Neutral Citation No. - 2024:AHC:2800

Reserved

Court No. - 65

Case :- APPLICATION U/S 482 No. - 31570 of 2023

Applicant :- Abbas Ansari And Another

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

Counsel for Applicant :- Upendra Upadhyay

Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh,J.

1. Heard Sri Upendra Upadhyay, learned counsel for the applicants learned A. G. A. for the State.

2. The present application under Section 482 Cr.P.C. has been filed for quashing the charge-sheet dated 30.4.2022 filed in Case Crime No. 27 of 2022, Criminal Case No. 264 of 2023; State of U. P. Versus Abbas Ansari and others, under Sections-188, 177-H IPC and Section-133 of the Representation of People Act, 1950, P. S.-Dakshin Tola, district-Mau and also to quash the cognizance and summoning order dated 6.1.2023 passed by learned A. C. J. M. / S. D., Mau in aforesaid case.

3. Learned counsel for the applicants submitted that no prima facie case is made out against the applicants. The first information report was lodged against applicant no. 1 and unknown persons, alleging that on 22.2.2022 the applicant no. 1 along with his supporters carrying several vehicles was canvassing in election. As the Election Model Code of Conduct was in force, the applicant no. 1 was asked to produce passes of vehicles, but he failed to produce any pass. Learned counsel submitted that for prosecution of a person under Section 188 I. P. C., a complaint has to be filed in terms of Section 195 Cr. P.

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C. but in the present case, no such complaint has been filed and thus the summoning of applicants / accused under Section 188 I. P. C. is against the provisions of law. Referring to the provisions of Section 171-H IPC, it was submitted that there is absolutely no material or allegation that any person was incurring or authorizing expenses of amount of holding any public meeting or upon any advertisement circular or publication or in any other way for promoting elections of such candidate and thus, no offence under Section 171-H is made out. The provisions of Section 133 of the Representation of People Act, 1950 were also referred and it has been pointed out that there is no material to make out a case under Section 133 of the Representation of People Act. Learned counsel submitted that the summoning of the applicant under Section 188 I. P. C. is barred by the provisions of Section 195 Cr. P. C. and that no ingredients of offence under Section 171-H I. P. C. and Section 133 of the Representation of People Act, 1950 are satisfied, thus, no prima facie case at all is made out against the applicants. The trial Court failed to consider the material and position of law while passing impugned cognizance / summoning order. It was submitted that the impugned order has been passed in a mechanical manner without considering the material on record and thus, the impugned charge-sheet and proceedings are liable to be quashed. It was submitted that in the similar facts, proceedings have been quashed against applicant no. 1 by this Court in another case vide order dated 12.9.2023 passed in Application Under Section 482 Cr. P. C. 23900 of 2023; Abbas Ansari and two others Versus State of U. P. and another.

4. Learned A. G. A. has opposed the application and submitted that the material collected during investigation has to be

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considered by the trial Court during trial and that at this stage it cannot be said that no prima case is made out. The submission of charge-sheet and taking cognizance by the Court cannot be said an abuse of process of law. The applicants have committed the crime in question and after through investigation, the investigating officer has submitted charge-sheet. The applicant no. 1 has criminal history of nine cases and similarly, applicant no. 2 has criminal history of seven cases. The first information report was lodged on true and correct facts and the allegations made in the first information report have been substantiated during investigation. In view of the material collected during investigation, it cannot be said that no prima facie case is made out against the applicants.

5. I have considered the rival submissions and perused the record.

6. Before proceeding further, it would be apt to quote Section 195 Cr.P.C., which reads as under:-

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.-(1) No Court shall take cognizance

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, (45 of 1860), or (ii) of any abetment of, or attempt to commit, such offence, or (iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;
(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or (ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

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(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), 1 [except on the complaint in writing of that Court or by such officer of the Court as that Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate.]

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appellable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

7. Thus, in respect of offences punishable under Sections 172 to 188 IPC or abetment thereof, the Court can take cognizance only on a complaint in writing made the public servant concerned or some public servant to whom he administratively subordinate. The prohibitory orders are issued by the executive Magistrates. In this connection reference may be made to the case of Harvinder Singh (supra). In the instant matter,

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admittedly no such complaint of public servant concerned has been filed and the cognizance has been taken on the charge-sheet submitted by the police. The charge-sheet cannot be treated to be a complaint, as envisaged under section 195 CrPC.

8. In view thereof, taking cognizance for the offence under Section 188 IPC by the learned Trial Court is hit by Section 195 Cr.P.C. and, therefore, the order taking cognizance for offence under Section 188 IPC against the applicants on the police report is not sustainable and the same is liable to be set aside.

9. So far the offence under Section 171-H IPC is concerned, it would be relevant to reproduce the provisions of section 171-H IPC, which reads as under:

"[171H. Illegal payments in connection with an election.—Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees:

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate."

10. From the aforesaid provisions, it is quite apparent that the said provision deals with mischief of illegal payment made in connection with an election. In the instant matter, there is absolutely no such allegation that any of the accused/applicant has incurred or authorized expenses on account of holding of any public meeting or upon any advertisement, circular or publication for the purpose of promoting or procuring the election of such candidate. After perusing the record and statements of witnesses, examined during investigation, there

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is absolutely no such material so as to fulfil the ingredients of the offence as prescribed under Section 171-H IPC and thus, no prima facie case under Section 171-H IPC is made out.

11. So far as the provisions of Section 133 of the Representation of People Act are concerned, it would be apt to refer the provisions of Section 123 (5) and 133 of the Representation of People Act, which are as under:-

Section 123(5)

(5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person 11[with the consent of a candidate or his election agent] 12[or the use of such vehicle or vessel for the free conveyance] of any elector (other than the candidate himself the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll:

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause. Explanation.—In this clause, the expression “vehicle” means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

133. Penalty for illegal hiring or procuring of conveyance at elections.—
If any person is guilty of any such corrupt practice as is specified in clause (5) of section 123 at or in connection with an election, he shall be punishable with imprisonment which may extend to three months and with fine.]

12. It is apparent from the aforesaid provisions that if any person is guilty of any corrupt practice as specified in Clause (5) of Section 123 at or in connection with election, he shall be punishable with imprisonment, which may extend to three months and with fine. Sub-section (5) of Section 123 provides that the hiring or procuring, whether on payment or otherwise, of any

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vehicle or vessel by a candidate or his agent or by any other person[with the consent of a candidate or his election agent] [or the use of such vehicle or vessel for the free conveyance] of any elector shall be considered as a corrupt practice. In the instant matter, there are clear allegations that the applicants were conveying in five vehicles bearing nos. UK07 BJ 0321, UP32 JD 0786, UP 32 HB 0786, UP 32 GZ 0786 and UP 32 JM 0786, and when the applicant no. 1 was asked to produce pass for moving said vehicles, he could not produce any such pass. The witnesses examined during investigation have also supported the said allegations that the applicants were found conveying in five vehicles and they could not produce any pass for plying those vehicles for conveying. The question whether the vehicles were being plied in conveying in relation to election or otherwise, is a question of fact, which can only be decided during trial. In the affidavit of the applicant filed in support of this application, it has been mentioned that applicant no. 1 was a candidate of Suheldev Bhartiya Samaj Party for assembly election from Mau constituency and the elections were going to be held on 7.3.2022 and as per notification dated 10.2.2022 the Election Commission of India has enforced Model Code of Conduct in several areas, including Mau constituency. In view of this fact, it cannot be said that no prima facie case under Section 133 of the Representation of People Act is made out. However, in the Representation of People Act it is not specified whether the offence under Section 133 is cognizable or not cognizable and thus, in view of the First Schedule of Cr. P. C., offence under Section 133 of the Representation of People Act has to be treated as non-cognizable offence as it is punishable with imprisonment, which may extend to three months and with fine only. In view of

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Explanation of Clause (d) of Section 2 Cr. P. C. report made by a police officer in a case which discloses after investigation, the commission of non-cognizable offence, shall be deemed to be a complaint.

13. In view of aforesaid, it is clear that no prima facie case under Section 171 H I. P. C. is made out and that summoning of the accused / applicants under Section 188 IPC is hit by the provisions of Section 195 Cr. P. C. However, it cannot be said that no offence under Section 133 of the Representation of People Act is made out. Thus, no case for quashing of the charge-sheet or entire proceedings is made out. However, impugned summoning order is not in accordance with law.

14. In view of the aforesaid, the impugned cognizance / summoning order dated 6.1.2023 is set aside and the matter is remitted back to the trial Court concerned with the direction to pass an order on summoning afresh in accordance with law.

15. The application under Section 482 Cr. P. C. is disposed of in above terms.

Order Date:- 04.01.2024

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