

Court No. - 85

Case :- APPLICATION U/S 482 No. - 9091 of 2022

Applicant :- Madhu Srivastava

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

Counsel for Applicant :- Dinesh Chandra Mishra, Pragati Mishra

Counsel for Opposite Party :- G.A., Abhishek Kumar Yadav, Manu Sharma

Hon'ble Brij Raj Singh, J.

Counter Affidavit filed on behalf of the opposite party No. 2 is taken on record.

Heard Dinesh Chandra Mishra, learned counsel for the applicant, counsel for the opposite party No. 2, learned A.G.A. for the State opposite party and perused the record.

The present 482 Cr.P.C. application has been filed with a prayer to quash the summoning order dated 29.11.2021 as well as entire proceedings passed by Upper Mukhya Nyayik Magistrate, Room No. 18, Allahabad against applicant in Complaint No. 01 of 2020, Raj Kumar Vs. Madhu Srivastava and Another, under Sections 406, 420 I.P.C., Police Station George Town, District Allahabad, with a further prayer to stay the aforesaid summoning order and proceedings of the aforesaid case.

Counsel for the applicant has submitted that a Co-ordinate Bench had heard the matter of co-accused, namely, Dr. Rajesh Srivastava, who is the husband of the present applicant in respect of the same Complaint Case and granted interim protection to him. It is further submitted that the case of the applicant is at par with the co-accused Dr. Rajesh Srivastava and she is also entitled for interim protection during the pendency of the matter. The Co-ordinate Bench while granting stay to the co-accused Dr. Rajesh Srivastava on 26.04.2022

entertaining Application U/s 482 No. 9176 of 2022 (Dr. Rajesh Srivastava Vs. State of U.P. and Another), passed the following order:

"Heard learned counsel for the applicant, Sri Manu Sharma, learned counsel for the opposite party no.2 and learned A.G.A. for the State.

The present 482 Cr.P.C. application has been filed praying for quashing the proceedings of Complaint Case No. 1 of 2020 (Raj Kumar Vs. Madhu Srivastava and another) under Sections 406, 420 I.P.C. Police Station George Town, District Allahabad pending before learned Additional Chief Judicial Magistrate, Room No.18, District Allahabad as well as to quash the summoning order dated 29.11.2021 passed in the aforesaid case.

Learned counsel for the applicant submits that the dispute is purely of contractual in nature which has been dragged into criminal prosecution of the applicant at the behest of the opposite party no.2 He further submits that the applicant has been falsely implicated in the present case due to ulterior motive. Submission is that the malafides which motivated the opposite party have been emphasized and several submissions in order to expose the falsity of the allegations have been made. Further submission is that malafides behind the prosecution are apparent on the face of record and if the proceedings against the applicants are allowed to go on, it will result in the abuse of court's process. Learned counsel for the applicant therefore submits, no prosecution could lie against the applicant, in such circumstances.

Matter requires consideration.

Notice on behalf of opposite party nos. 1 and 2 have been accepted by learned A.G.A.as well as by learned counsel for the opposite party no.2.

Opposite parties may file their counter affidavits within four weeks. Rejoinder affidavit may be filed within two weeks thereafter.

List immediately after expiry of the aforesaid period before appropriate Bench.

Till the next date of listing, no coercive action shall be taken against the applicant in the aforesaid

case."

In view of the aforesaid, it prima facie appears that the matter requires consideration and hearing of the opposite party No. 2 also.

Rejoinder affidavit, if any may be filed within a week from today.

List **in the week commencing 25.07.2022.**

Till the next date of listing, **no coercive steps shall be taken against the applicant** in respect of the aforesaid summoning order and the aforesaid complaint case.

Order Date :- 12.7.2022

Arun K. Singh