

Court No. - 67

Case :- APPLICATION U/S 482 No. - 27820 of 2021

Applicant :- Ramesh Chauby

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

Counsel for Applicant :- Abhinav Gaur, Sr. Advocate, Vibhu Rai

Counsel for Opposite Party :- G.A.

Hon'ble Rahul Chaturvedi, J.

Heard Sri Anoop Trivedi, learned Senior Counsel assisted by Sri Vibhu Rai, learned counsel for the applicants and learned A.G.A for the State.

The present applicant under Section 482 Cr.P.C. has tried to invoke its plenary been filed for quashing the order dated 25.08.2021 passed by the Additional District & Sessions Judge/Special Judge (Prevention of Corruption Act), Court No.4, Varanasi in Special Sessions trial No. 33 of 2016, arising out of case crime no. 101 of 2016, under Sections 392, 343 467, 468, 471, 504, 409, 411, 218, 420, 120B IPC and Section 13(1)D(1), (2)(3) 13(2) of Prevention of Corruption Act, whereby the court below has declined to withdraw the prosecution against the applicant under Section 321 Cr.P.C., as well as further proceedings in Special Sessions Trial No. 33 of 2016, under Sections 392, 343 467, 468, 471, 504, 409, 411, 218, 420, 120B IPC and Section 13(1)D(1), (2)(3) 13(2) of Prevention of Corruption Act, P.S. Gopiganj, District Bhadohi.

I have perused the order impugned whereby learned trial judge has venture into the assessing the evidentiary value of PWs-3, 4 and 5.

It has contended by the counsel for the applicant that an application was moved by learned ADGC (Crl.), Varanasi on 08.10.2020 on the ground that the aforesaid offence is politically motivated against the applicant who is public servant/SHO, Gopiganj, District Bhadohi at relevant point of time.

I have heard learned counsel for the applicant at length.

The genesis of the case starts from the political interference whereby the prosecution against the applicant was initiated at the behest of Abu Asim Azmi, President, Samajwadi Party, Maharashtra, dated 30.01.2016 and thereafter entire castle of the prosecution was initiated against the applicant and his subordinate police officials. It is contended by the counsel that after conducting the alleged investigation, which is more of an eye wash, the police has submitted charge sheet under Sections 467, 468, 471, 504, 409, 392, 343, 120B, 411, 218, 420 IPC and Section 13(1) (c), 13(1)d(1)(2)(3) and 13(2) of Prevention of Corruption Act over which the judge concerned has taken cognizance on 08.07.2016. It is contended by the counsel that this was a purposive prosecution just to discourage and harass the public servant who were in the discharge of the official duty nab the culprit of another case but instead of applying the judicial mind to the true import of Section 321 Cr.P.C., learned trial court concerned started assessing the testimonies of the witnesses so as to assess the success of the prosecution case. This is uncalled for observation.

Learned counsel for the applicant relied upon the judgement of this court in the case of **State of U.P. Vs. Aishwarya Chaudhary @ Mausam** in

Crl.Revision No. 3971 of 2018 decided on 15.05.2019 as well as another judgement of the Allahabad High Court in the case of State of U.P. Vs. Dheeraj Kumar Ojha in Criminal Revision No. 485 of 2020 decided on 19.03.2021. Paragraph 30 of the case of **State of U.P. Vs. Aishwarya Chaudhary @ Mausam** is quoted herein below:-

"30. Learned Sessions Judge while passing the order impugned has ventured into whelm and adjudicated the matter on merits instead of supervising the case, as per law whereas there was no material before him to challenge that this withdrawal of the prosecution or not; in the interest of public interest or in good faith and in order to maintain the broad ends of justice, public order, peace and tranquility or it would sub verse the case of public interest. There seems no material for justifying the same."

The matter requires consideration.

Notice on behalf of opposite party no.1 has been accepted by learned A.G.A, who prays for and is allowed six weeks time to file counter affidavit.

Let notices be issued to opposite party no.2 through CJM, Hapur by special messenger, who may give written notice regarding service of notice upon opposite party no.2 and also file counter affidavit within the same period as stipulated hereinabove.

Rejoinder affidavit, if any, may be filed within two weeks thereafter.

List after expiry of the aforesaid period before appropriate Court.

Till the next date of listing, the effect and operate of order dated 25.08.2021 and further proceeding of Special Sessions trial No. 33 of 2016, arising out of case crime no. 101 of 2016, under Sections 392, 343 467, 468, 471, 504, 409, 411, 218, 420, 120B IPC and Section 13(1)D(1), (2)(3) 13(2) of Prevention of Corruption Act, P.S. Gopiganj, District Bhadohi shall remain stayed with the condition as law laid down by Hon'ble Apex Court in **Asian Resurfacing of Road Agency Pvt. Ltd. and other Vs. Central Bureau of Investigation** decided on 28.03.2018, which reads as under :-

"Situation of proceedings remaining pending for long on account of stay needs to be remedied. Remedy was required not only for corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings were held up. At times, proceedings were adjourned sine die on account of stay. Even after stay was vacated, intimation was not received and proceedings were not taken up. It was directed that in all pending cases where stay against proceedings of civil or criminal trial was operating, the same would come to end on expiry of six months from today unless in

exceptional case by speaking order such stay was extended. In cases where stay was granted in future, same would end on expiry of six months from date of such order unless similar extension was granted by speaking order."

It is made clear that in the event if the pleadings are not exchanged because of any non cooperation of any of the contesting parties in not filing their counter version, the court would be free to pass a suitable order at the end of above mentioned upper limit of six months.

Order Date :- 23.12.2021

Abhishek Sri.