

Sushil Kumar and ors. Vs. State of Uttar Pradesh (U.P.) and anr.

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Court : Allahabad

Decided On : Sep-23-2010

Judge : Bala Krishna Narayana,J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482, 161.

Appeal No. : APPLICATION U/S 482 No. - 29902 of 2010.

Appellant : Sushil Kumar and ors.

Respondent : State of Uttar Pradesh (U.P.) and anr.

Advocate for Pet/Ap. : Lalchandra Mishra, Adv.

Judgement :

1. Heard learned counsel for the applicant and learned AGA for the State. With the consent of learned counsel for the parties, this application under Section 482 Cr.P.C. is being disposed of without calling for any counter affidavit and without issuing any notice to the opposite party. From the facts stated in the affidavit filed along with this application, it transpires that on the basis of the First Information Report lodged by Smt. Meera Devi, opposite party no. 2 at P.S. Kotwali, District Jhansi a Case Crime No. 37 of 2003 under Sections 498-A, 323, 504, 506 IPC & D.P.

2. Act was registered and charge sheet was submitted against all the applicants by the Investigating Officer without making any investigation and without recording the statements of either the complainant or other witness under Section 161

Cr.P.C. whereupon learned Judicial Magistrate, Jhansi by his order dated 1.10.2008 directed further investigation. After passing of the aforesaid order, an application was moved by opposite party No. 2 before the Judicial Magistrate, Court No. 9, Jhansi on 5.5.2010 stating therein that the Court instead of directing further investigation may record her statement and proceed further in the matter.

3. The Court below taking note of the aforesaid application took cognizance of the offence by order dated 4.8.2003. The instant application has been filed by the applicants with a prayer to quash the charge sheet dated 4.8.2003 submitted in Case Crime No. 985 of 2010 (State v. Sushil Kumar & ors) as well as the cognizance order dated 4.8.2003. Learned counsel for the applicants submitted that there being no material before the Court below, cognizance could not have been taken as such the Court below has committed a manifest error of law in taking cognizance only on the basis of the application dated 5.5.2010.

4. He further submitted that proper investigation be conducted and statements of witnesses be recorded and then if warranted cognizance be taken.. Per contra learned AGA made submissions in support of the impugned order. He however, does not dispute the factual aspect of the matter that there has not been any investigation in the matter.

5. I have very carefully gone through the materials brought on record and I am satisfied that no investigation was done in the matter and there was no evidence before the Court below on the basis of which he could not have come to the conclusion that there was prima facie evidence against the applicants for proceeding against them. In view of the above admitted position, the Court below despite being conscious of the fact that it had directed further investigation, the impugned order taking cognizance merely on the application of opposite party no. 2 without there being any investigation cannot be sustained and the same is liable to be set aside. For the aforesaid reasons, this application is allowed. The order dated 4.8.2003 is set aside.

6. The Court concerned is directed to pass a fresh order in the matter after the investigation is completed. The Court shall also ensure that further investigation in the matter is completed within a specified period preferably within a period of six

weeks from the date of production of certified copy of this order.

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