

Dilshad And Another vs State Of U.P. And Another on 30 April, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:67387

Court No. - 87

Case :- APPLICATION U/S 482 No. - 33475 of 2024

Applicant :- Dilshad And Another

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

Counsel for Applicant :- Sheeba Rizvi, Syed Shabbir Hussain

Counsel for Opposite Party :- G.A.

Hon'ble Prashant Kumar, J.

1. Heard Sri Shabbir Hussain, learned counsel for the applicants, Sri Jyoti Kumar Singh, learned A.G.A. for the State-O.P. no.1 and perused the record.
2. The present application under Section 482 Cr.P.C. has been filed by the applicant praying for quashing impugned judgment and order dated 16.07.2024 passed by Additional District and Sessions Judge, Nageena, District-Bijnor in Criminal Revision No.538 of 2024 (Dilshad and others vs. State of U.P. and others) and order dated 21.09.2023 passed by Additional Chief Judicial Magistrate, Nageena, District-Bijnor in Criminal Complaint Case No.319 of 2015 (Kusum Devi vs. Pramod Kumar and others) u/s 420, 467, 468, 471 IPC and further be pleased to allow the application No.Ba-31 of the applicants u/s 245(2) Cr.P.C. in the aforesaid case.
3. An application u/s 156(3) Cr.P.C. was filed by O.P. no.2 on 24.08.2015 wherein it has been alleged that the applicant hatched conspiracy and got a sale deed executed in favour of applicant no.1 on

29.07.2015 from her husband Jitendra Kumar while he was in custody of Haryana Police and applicant nos.2 and 3 are said to be witnesses of the said sale deed. Aforesaid application was treated as complaint case vide order dated 09.09.2015. Thereafter, court below has passed summoning order dated 20.08.2018. The aforesaid order was challenged before this Court in Application u/s 482 No.23736 of 2019 which was disposed of vide order dated 16.07.2019. Thereafter, the applicants moved an application for their discharge u/s 245(2) Cr.P.C. which was rejected by the court below on 21.09.2023. The applicants thereafter preferred Criminal Revision No.538 of 2024, which was also dismissed vide order dated 16.07.2024. The applicants have challenged both the aforesaid orders by means of present application.

4. Learned counsel for the applicant submits that the applicants are innocent and have not committed any offence as alleged in the complaint. The dispute between the parties is purely of civil nature, which has been given criminal colour by O.P. no.2 just to exert pressure upon the applicants. He next contended that the court below has failed to appreciate the evidence properly while passing summoning order against the applicants. He further submitted that the revisional court has rejected the discharge application without properly appreciating the facts and legal aspect of the case. He further submitted that no offence against the applicants is disclosed and the court below has utterly failed to consider that no prima facie case is made out against the applicants. He also pointed out certain documents in support of his contention.

5. Per contra, learned AGA submits that the allegation levelled in the complaint is very serious in nature. He submitted during conducting enquiry and recording evidence of complainant and other witnesses u/s 200 and 202 Cr.P.C., sufficient material with regard to involvement of the applicants in the incident was found, on the basis of which the Court below has summoned the applicants. He further submitted that as far as the impugned order passed on the discharge application is concerned, it is settled principle of law that the Court has to look into and consider the material placed before the Court for considering the accused for discharge. To buttress his argument, learned AGA has relied on the judgment of the Hon'ble Apex Court in the matter of State of Orissa Vs Devendra Nath Padhi, (2005) 1 SCC 568, in which the Hon'ble Supreme Court had observed that for framing of charge and discharge it is only the material produced by the prosecution alone, which is to be considered for framing of charge or discharge.

6. Heard learned counsel for the parties and perused the record.

7. The Hon'ble Supreme Court in the matter of Union of India vs. Prafulla Kumar Samal and another, (1979) 3 SCC has held as follows:-

"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however If two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This how ever does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

8. This ratio was again followed by the Hon'ble Supreme Court in the matter of Kanchan Kumar Vs State of Bihar, 2022 (9) SCC 577 in which the ratio laid down in the matter of Prafulla Kumar Samal (supra) was upheld.

9. The Hon'ble Supreme Court in the matter of Captain Manjeet Singh Virdi (Retd) Vs Hussain Mohammed Shattaf and others, 2023 (7) SCC 633, has observed that the law on the issue of discharge is well settled that, at the time of charge the entire evidence produced by the prosecution is to be believed and in case no offence is made out in the light of evidence produced by the prosecution then only the accused can be discharged.

10. In the instant case, the trial court while rejecting the discharge application has come to a finding that the material produced by the prosecution is enough and prima facie case is made out against the accused, the accused cannot be discharged. In the instant matter, a prima facie case is made out against the applicants as the material placed before the Court discloses grave suspicion against the applicants.

11. In view of the law laid down by the Hon'ble Supreme Court in the above mentioned judgments, I see no illegality in the impugned judgment and order dated 16.07.2024 passed by Additional District and Sessions Judge, Nageena, District-Bijnor in Criminal Revision No.538 of 2024 (Dilshad and others vs. State of U.P. and others) as well as order dated 21.09.2023 passed by Additional Chief Judicial Magistrate, Nageena, District-Bijnor and the instant application under Section 482 Cr.P.C. is accordingly, dismissed.

Order Date :- 30.4.2025 Manish Himwan