

Case :- APPLICATION U/S 482 No. - 6956 of 2020

Applicant :- Abdullah Azam Khan

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

Counsel for Applicant :- Saiful Islam Siddiqui, Tahira Kazmi

Counsel for Opposite Party :- G.A.

Hon'ble Om Prakash-VII,J.

Heard learned counsel for the applicant and the learned AGA for the State and perused the record.

This application under Section 482 CrPC has been filed with the prayer to quash the charge-sheet, cognizance order dated 30.7.2019 as well as the entire proceedings in Case No. 1452 of 2019, arising out of Case Crime No. 334 of 2019, under Sections 171-G IPC and 125 Representation of People Act, Police Station Kotwali, District Rampur pending before the Additional Chief Judicial Magistrate-I, Rampur and further to stay further proceedings of the aforesaid case.

It is submitted by the learned counsel of the applicant that the FIR has been lodged on false grounds while the applicant has not committed any offence. The police has also submitted charge sheet on the basis of insufficient evidence against the applicant. Essential ingredients to constitute the offence are lacking. The present prosecution has been instituted with a malafide intention. It is also submitted that cognizance taken in the matter on the basis of charge sheet is illegal and without application of judicial mind. Offences levelled against the applicant are non-cognizable. At this juncture, learned counsel for the applicant referred to the Schedule appended with CrPC and also punishment provided for the offences levelled against the applicant. It is next contended that proceeding against applicant can only be continued on the basis of complaint under Chapter XV CrPC. It is further submitted that no offence is made out. Learned counsel for the applicant also referred to the contents of F.I.R. as well as statement of witnesses recorded during investigation. It is next contended that if entire F.I.R. version is taken into consideration, it is evident that speech delivered by applicant was a secular, which does not demonstrate any of the ingredients of alleged offences. Words said to have been spoken by the applicant were not intended to any community, caste, creed or religion. Learned counsel for the applicant pointed out certain documents and statements in support of his contention.

On the other hand, learned AGA opposing the prayer submitted

that though offences levelled against the applicant are non-cognizable, yet there is no infirmity or illegality in the impugned order warranting interference by this Court.

I have considered the submissions made by the learned counsel for the parties and have gone through the entire record carefully.

As is evident, in this matter FIR was lodged, matter was investigated and the concerned Investigating Officer submitted charge-sheet for the offence under Sections 171-G IPC and 125 Representation of People Act. A perusal of record shows that the Magistrate concerned without considering the nature of offence for which charge-sheet was submitted, took cognizance on 30.7.2019. Since offence under Sections 171-G IPC and 125 Representation of People Act are non-cognizable offence, cognizance could not be taken on the charge-sheet for the aforesaid offences, as provisions of Section 2 (d) CrPC and Chapter XV of the CrPC will be attracted in the matter. In the circumstances, the Court is of the opinion that cognizance taken vide order dated 30.7.2019 on the charge-sheet submitted for the offence under Sections 171-G IPC and 125 Representation of People Act is liable to be set-aside.

Hence, the application is **disposed of**. The order dated 30.7.2019 taking cognizance on the charge sheet and all other consequential orders passed thereafter are set aside with the direction to the Magistrate concerned to pass a fresh order in light of the settled principle of law.

Order Date :- 20.2.2020

safi