

Court No. - 86

Case :- APPLICATION U/S 482 No. - 7415 of 2024

Applicant :- Rikhab Birani And Another

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

Counsel for Applicant :- Ravikant Shukla

Counsel for Opposite Party :- Dheeraj Kumar Dwivedi,G.A.

Hon'ble Vivek Varma,J.

1. Heard learned counsel for the applicants, Sri Neeraj Kumar Sharma, learned A.G.A. for the State- opposite party no 1, and Sri Dheeraj Kumar Dwivedi, learned counsel for the opposite party no. 2, and perused the record.

2. The present application under Section 482 of the Criminal Procedure Code has been filed with the prayer to quash the charge-sheet dated 12.09.2023 submitted in Case Crime No. 78 of 2023, under Sections 420, 406, 354, 504, 506 I.P.C. against the applicant no. 1 and under Sections 420, 406, 504, 506 I.P.C. against the applicant no. 2, Police Station Harbansh Mohal, district Kanpur Nagar including the cognizance order dated 17.01.2024 and the entire proceedings of Criminal Case No. 3858 of 2023, State v. Rikhab Birani and another, pending in the Court of the Metropolitan Magistrate-IX, Kanpur Nagar.

3. It is submitted that the applicants have been falsely implicated in the instant case. No offence against the applicants is disclosed and the present prosecution has been instituted with a malafide intention for the purposes of harassment. The learned Magistrate has failed to take into consideration the factual and legal aspect of the matter while taking cognizance of the matter against the applicants.

4. On the other hand, learned A.G.A. and learned counsel for the opposite party no. 2 submit that prima facie case is disclosed against the applicants and no interference is warranted in the present case.

5. From the perusal of the material on record and looking into the facts of the case at this stage it cannot be said that no offence is made out against the applicants. On the inducement of the applicants, the opposite party no. 2 had transferred Rs. 19 lakhs in

the account of the applicant no. 1 on the false promise that the sale-deed of House No. 65/73, Moti Mohal, Police Station Harwansh Mohal, Kanpur Nagar would be executed in favour of the opposite party no. 2. At this stage, only *prima facie* case is to be seen in the light of the law laid down by the Supreme Court in the cases of **R.P. Kapur v. State of Punjab, AIR 1960 SC 866; State of Haryana v. Bhajan Lal, 1992 SCC (Cri) 426; State of Bihar v. P.P. Sharma, 1992 SCC (Cri) 192;** and, lastly **Zandu Pharmaceutical Works Ltd. v. Mohd. Saraful Haq and another (Para-10), 2005 SCC (Cri) 283.** The disputed defence of the accused cannot be considered at this stage.

6. In view thereof, the prayer as made is refused. The application stands rejected.

Order Date :- 9.5.2024

SKT/-