

**Court No. - 77**

**Case :- APPLICATION U/S 482 No. - 21012 of 2024**

**Applicant :-** Rajan Rohtagi

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

**Counsel for Applicant :-** Aklank Kumar Jain

**Counsel for Opposite Party :-** G.A., Mirza Ali Zulfaqar

**Hon'ble Rajeev Misra, J.**

1. Heard Mr. Aklank Kumar Jain, the learned counsel for applicant, the learned A.G.A. for State-opposite party-1 and Mr. Mirza Ali Zulfaqar, the learned counsel representing first informant-opposite party-2.

2. Perused the record.

3. Applicant-Rajan Rohtagi, who is a charge sheeted accused, has approached this Court by means of present application under Section 482 Cr.P.C. with the following prayer:-

***"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to allow the present criminal misc. application and quash the impugned summoning order dated 24.01.2024 passed by the Chief Judicial Magistrate, Rampur as well as entire proceedings of Case No.178 of 2023 (State Vs. Rajan Rahtagi) under Section 323, 341, 504 and 506 IPC, Police Station Civil Line, District Rampur including charge sheet dated 18.08.2022 arising out of case crime No.0263 of 2022, Police Station Civil Line, District Rampur pending, otherwise, the applicant shall suffer an irreparable loss and hardship which may not be compensated by any other means.***

***It is further prayed that all further proceedings of Case No.178 of 2023 (State Vs. Rajan Rahtagi) under Section 323, 341, 504 and 506 IPC, Police Station Civil Line, District Rampur arising out of case crime No.0263 of 2022, Police Station Civil Line, District Rampur pending in the Court of Chief Judicial Magistrate, Rampur may also be stayed during the pendency of the present criminal misc. application and/or pass such other and further order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."***

4. Learned counsel for applicant submits that first informant-opposite party-2 is wife of younger brother of present applicant.

On account of marital discord in between the brother of applicant and first informant-opposite party-2, a matrimonial dispute arose between the parties. However, instead of settling the matter peacefully, first informant-opposite party-2 lodged an FIR dated 26.10.2021, which was registered as Case Crime No. 0063 of 2022, under Sections 498-A, 323, 504, 354 IPC and Sections 3/4 Dowry Prohibition Act. In the aforesaid FIR, Investigating Officer upon completion of statutory investigation in terms of Chapter-XII Cr.P.C. has, ultimately, submitted the police report (final report) in terms of Section 173(2) Cr.P.C. Against the aforesaid police report, the first informant-opposite party-2 has filed a protest petition, which has not yet been allowed.

5. In the interregnum, only for false and malicious prosecution of the present application, an FIR 16.05.2022 was lodged, which was registered as Case Crime No. 0263 of 2022, under Sections 323, 341, 504, 506 IPC, Police Station-Civil Lines, District-Rampur. He has then invited the attention of Court to the impugned FIR and on basis thereof, he contends that the first information report giving rise to present criminal proceedings was lodged by first informant herself, who is a victim. In the body of FIR, there is no recital to the effect that the first informant had sustained injury. He, therefore, contends that though FIR is not the encyclopedia of the prosecution case but does disclose the basic prosecution case. In support of above, he has referred to the following judgments of Supreme Court in **(i). Manoj and Others Vs. State of Maharashtra, (1999) 4 SCC 268, (ii). Subhash Kumar Vs. State of Uttarakhand, (2009) 6 SCC 641 and (iii). Achhar Singh Vs. State of M.P. (2021) 5 SCC 543.** With reference to above, the learned counsel for applicant submits that once it is the admitted case of first informant that she did not receive any injury in the occurrence giving rise to the present criminal proceedings, therefore, the injury report of the first informant-opposite party-2 prepared subsequently are wholly malicious. Referring to the judgment of Supreme Court in **M/s Eicher Tractor Ltd. Vs. Harihar Singh (2008) 16 SCC 763,** he, therefore, concludes that the present criminal proceedings have been engineered only to wreck vengeance i.e. for the purpose of malicious prosecution. As such, the same are liable to be quashed by this Court.

6. Per contra, the learned A.G.A. and the learned counsel representing first informant-opposite party-2 have opposed this application. However, they could not dislodge the factual and legal submissions urged by the learned counsel for applicant with reference to the record at this stage.

7. Having heard, the learned counsel for applicant, the learned A.G.A. for State, the learned counsel representing first informant-opposite party-2 and upon perusal of record, matter requires consideration.

8. Notice on behalf of opposite party-1 has been accepted by the learned A.G.A.

9. Issue notice to opposite party-2.

10. All the opposite parties may file their respective counter affidavits on or before the date fixed in the notice.

11. List for admission on the date fixed in the notice.

12. Considering the facts and circumstances of the case and also the submissions urged by the learned counsel for applicant as noted herein above, as an interim measure, it is, hereby provided that until further orders of this Court, further proceedings of Criminal Case No. 178 of 2023 (State Vs. Rajan Rahtagi), under Sections 323, 341, 504 and 506 IPC, Police Station-Civil Line, District-Rampur now pending in the Court of Chief Judicial Magistrate, Rampur shall remain stayed.

**Order Date :- 4.9.2024**

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