

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 930 of 2023

Petitioner :- Smt. Mamta Pandey

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Sarita Singh, Ajay Kumar Singh

Counsel for Respondent :- G.A.

Hon'ble Mrs. Jyotsna Sharma, J.

1. Heard Sri Ajay Kumar Singh, learned counsel for the petitioner, learned AGA for the State and perused the paper on record.

2. This matter under Article 227 has been filed to stay the further proceedings of Criminal Case No.868 of 2022 (Smt. Mamta Pandey vs. Babu Ram and others), under Section 156(3) CrPC, Police Station Sikrara, District Jaunpur, pending in the Court of Additional Chief Judicial Magistrate, II, Jaunpur.

3. From the material on record, following relevant facts emerge :

The opposite party no.2 Jatin Pandey lodged an FIR, Case Crime No. 272 of 2021, under Section 302 IPC naming Mamta Pandey and her husband Ashish Pandey as the accused persons with the allegations that his two sisters protested against raising of construction by the accused side; and enraged over their protest, both of them attacked his sisters with *baka* and *fawda* and they died of injuries.

This incident happened on 18.11.2021 at about 11:30.

Mamta Pandey, the petitioner, *herein*, filed an application under Section 156(3) CrPC against four accused persons Jatin, Vijayshankar, Asha Devi, Pinki with the allegation that on 18.11.2021 at about 11:30 in the morning, all the accused persons came armed with weapons like *lathi*, *danda* and *fawda* and protested against raising of construction. On exhortation by one of the accused, they tried to physical assault them, however, the sisters of the accused sustained injury of *baka*.

The fact that an FIR was lodged against the petitioner and her husband u/s 302 IPC has not been disclosed in the petition.

4. This application moved under Section 156(3) CrPC was treated as complaint by an order passed by learned ACJM II on 25.04.2022. The summoning order was affirmed in Revision No.101 of 2022. The petitioner is now before this Court aggrieved by the aforesaid two orders.

5. The main contention of the petitioner is that he sustained some injuries and that the matter required investigation, therefore, learned Magistrate ought to have ordered for investigation instead of treating it as complaint. Another contention is that he has its own cross version, therefore, FIR should have been registered.

6. I perused the material on record including the impugned orders, the learned Trial Court observed that there is no particular fact which required the investigation by the police. The trial court, on the basis of judgment of the Supreme Court passed in the case of **Smt. Mona Pawar vs. Allahabad High Court and others (2011) SCC 12453 SC and Sukhvasi vs. State of Uttar Pradesh and others (2007) (59) SCC 739** found it fit to treat the application as complaint. The learned court of revision agreed with the observation of the trial court that there was no fact which required investigation. And The revisional court declined to interfere and dismissed the revision.

7. The power under Article 227 of the Constitution of India is definitely supervisory in nature, but it should be exercised sparingly and in appropriate cases, only to prevent miscarriage of justice or flagrant violation of law.

8. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected.

9. In my view, the petition lacks merit and is therefore **dismissed**.

Order Date :- 7.12.2023

Priya