

Court No. - 80

Case :- CRIMINAL MISC. WRIT PETITION No. - 4767 of 2013

Petitioner :- Bhupendra Singh

Respondent :- State Of U.P. And Anr.

Counsel for Petitioner :- Rajiv Gupta, Anil Kumar Singh Bishen, Chandra Bhushan Yadav, Dileep Kumar, Rajrshi Gupta

Counsel for Respondent :- Govt. Advocate

Hon'ble Subhash Chandra Sharma, J.

Heard learned counsel for the petitioner as well as learned A.G.A. for the State and perused the material on record.

This writ petition has been filed with the following prayers:-

(i) A writ, order or direction in the nature of certiorari quashing the impugned orders dated 25.02.2013, passed by Additional Session Judge, Court No. 2, Firozabad, in Criminal Revision No. 176 of 2012 and the order dated 26.05.2012 passed by Second Additional Civil Judge (Junior Division), Firozabad in Case No. 591-A/2010 arising out of Case Crime No. 151 of 2002, Police Station Khaingarh, District Firozabad.

(ii) Issue a writ, order or direction in the nature of certiorari for quashing the entire proceedings of Case No. 1308 of 2006 pending in the Court of Judicial Magistrate/ Second Additional Civil Judge (Junior Division), Firozabad under Sections 147, 148, 149, 307, 504 I.P.C.

Brief facts in this case are that an F.I.R. was lodged against the petitioner as case crime No. 151 of 2002 under Sections 147, 148, 149, 307, 504 I.P.C. and in pursuance thereof proceedings were initiated as case No. 591-A of 2010 in which the petitioner was summoned by the learned court concerned by order dated 23.01.2012 which was challenged before this Court in application under Section 482 Cr.P.C. No. 9723 of 2012 for quashing the same but the prayer for quashing the order as well as the proceedings of the aforementioned case was refused and he was directed to surrender before the court concerned within four weeks or till the date of surrender whichever was earlier no coercive action was to be taken against him, however it was also directed that, in case, he failed to move an application for surrender before the court concerned within the time indicated therein the application was to stand automatically dismissed. This order was passed on 22.03.2012 but the petitioner did not appear before the learned court concerned in compliance thereof. Later on, he moved an application for discharge before the learned court of Magistrate which was disposed of by order dated 26.05.2012 while rejecting the application as being having no jurisdiction with the court because the case was triable by learned court of Session. The order dated 26.05.2012 was challenged before the learned

court of Session in criminal revision No. 176 of 2012 that was disposed by order dated 25.02.2013 while dismissing the revision and petitioner was directed to appear before the learned court in compliance of order passed by this Court as aforesaid. Against the orders passed by learned Magistrate on 26.05.2012 and by the learned Additional Sessions Judge on 25.02.2013 present petition has been preferred before this Court.

It is submitted by learned counsel for the petitioner that in this case the petitioner is innocent and no any material was found against him during investigation of the case and no any prima facie case was found to be made out against him even though he was summoned by the learned court which was challenged by him before this Court in application Under Section 482 Cr.P.C. and was disposed with direction to appear before the learned court as aforesaid but later on he moved an application for discharge because there was no material on record against him but this fact was not taken into consideration by the learned court concerned as well as the learned revisional court, therefore, the order passed by both the courts are illegal and liable to be set aside.

Learned A.G.A. opposed the prayer as aforesaid and contended that in this case the petitioner was charge sheeted as an absconder that was the reason the file related to his case was separated and process was issued against him by the learned court which was challenged before this Court in the aforesaid application under Section 482 Cr.P.C. and after considering all the facts and circumstances material on record the prayer for quashing the same was rejected and he was directed to surrender before the learned court concerned within a period of four weeks but he did not comply the order. An application for discharge was to be moved before the learned court of Session at an appropriate stage as required under Section 227 Cr.P.C. but it was moved before the learned Magistrate without appearing before him whereas the exclusive jurisdiction to try the case triable by court of Session was vested with the learned court of Session, in this way the learned Magistrate passed the order in accordance with law and the learned revisional court also dismissed the revision after considering all these facts and the direction passed by this Court, therefore, this petition being devoid of merit is liable to be dismissed.

Considering the facts and circumstances of the case submissions made by learned counsel for the petitioner as well as learned A.G.A., perusal of record, the orders passed by this Court in application under Section 482 Cr.P.C. No. 9723 of 2012, the learned Magistrate on 26.05.2012 and the learned Additional Sessions Judge on 25.02.2013 there appears no any illegality or impropriety in the order passed by the learned courts below but this petition being devoid of merit is liable to be dismissed.

Accordingly, this petition is ***dismissed***.

However, it is directed that, in case, the revisionist appears before the learned court concerned and moves bail application it shall be heard and decided as expeditiously as possible in the light of latest law as laid down by the ***Hon'ble Supreme Court in the case of Satender Kumar Antil Vs. Central Bureau of***

Investigation and another LL 2022 SC 577 decided on 11.07.2022. and also with the direction that if at appropriate stage discharge application under Section 227 is moved by the petitioner before the learned trial court it shall be heard and decided on considering the material on record regarding his complicity.

Order Date :- 22.11.2023

Suraj Srivastav