

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 3788 of 2023

Petitioner :- Rituraj Singh

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Suresh Chandra,Prakash Man Tiwari

Counsel for Respondent :- G.A.,Umesh Kumar Vishwakarma

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Prakash Man Tiwari, learned counsel for the petitioner, Sri Umesh Kumar Vishwakarma, learned counsel for the respondent nos. 2, 3 and 4 and Sri Rajesh Kumar Gupta, learned A.G.A. for the State.

2. The material facts are as below:

3. The petitioner Rituraj Singh lodged an F.I.R. against his father-in-law and his sons (sala of the petitioner) and two unknown persons alleging that all of them came to his house and physically assaulted the first informant, his mother and his sister. The F.I.R. was lodged under sections 147, 323 and 504 I.P.C. After investigation, the charge sheet has been submitted under sections 323, 504 I.P.C.

4. Indisputably, this F.I.R. was lodged on 27.10.2021 and the charge sheet has been submitted on 20.11.2021. Admittedly, the cognizance has been taken and the case is proceeding. After almost a gap of one year and four months from the date of submission of charge sheet, the first informant moved an application with a prayer that the court must take cognizance under an additional section of 452 I.P.C. It is stated in the application that the incident took place inside his house and that he has got CCTV footage and the affidavits of the witnesses as evidence.

5. The learned trial court heard the first informant and dismissed his application on 12.01.2023. The first informant preferred a revision i.e. Revision No. 29 of 2023. The same was also dismissed and the revisional court declined to interfere in the order.

6. Admittedly after investigation, the charge sheet disclosed commission of non-cognizable offence. The law provides that in such contingency, the case shall be treated as complaint. Obviously, the procedure as provided in Chapter XX shall have to be adopted. The submissions of the petitioner in my view, cannot appropriately be decided at this stage. He shall have an opportunity to produce his evidence and then he can also give an evidence to the effect that incident in fact, took place inside the house. The learned trial court shall have an opportunity, to decide the matter in its appropriate perspective. There is no occasion to take cognizance in additional sections when already, on the basis of material produced, the court has formed an opinion.

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. This power is not akin to powers of appellate court. The Supreme Court in **M/s.**

Garment Craft vs. Prakash Chand Goel, 2022 LiveLaw (SC) 39 quoted from **Estralla Rubber vs. Dass Estage (P) Ltd., (2001) 8 SCC 97** and observed that:-

"The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. 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."

8. In view of all the facts and circumstances, I do not find any good ground to interfere in the orders of the trial court as well as the revisional court in exercise of powers of superintendence under Article 227 of the Constitution of India and therefore this petition is hereby **dismissed**.

Order Date :- 16.10.2023
Sumit Kumar