

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 3119 of 2020

Petitioner :- Siddharth Nath @ Ful Chandra And 2 Others

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Umesh Chandra Tiwari

Counsel for Respondent :- G.A.

With:

Case :- MATTERS UNDER ARTICLE 227 No. - 686 of 2020

Petitioner :- Nilesh Kumar And 2 Others

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Narendra Deo Shukla, Sanjay Kumar Upadhyay, Vivek Shukla

Counsel for Respondent :- G.A., Shri Prakash Dwivedi

Hon'ble Ram Manohar Narayan Mishra, J.

1. Heard learned counsel for the petitioners, Shri Umesh Chandra Tiwari learned counsel appearing on behalf of respondent No. 2 as well as Shri Chandra Shekhar Pandey holding brief of Shri Prakash Dwivedi and learned Additional Government Advocate and perused the record of the case.

2. Both the petitions being arising out of same impugned order dated 19.12.2019 passed by Revisional Court as well as order dated 20.03.2017 and 14.09.2017 passed by Judicial Magistrate. Both petitions are disposed of by this common order as the petitioners have assailed the order of both the courts below.

3. The instant writ petition has been filed for quashing the order dated 19.12.2019 passed by the Additional District and Sessions Judge, Court No. 3, Mirzapur dismissing the criminal revision No. 18 of 2018, which was filed against the order dated 14.9.2017 passed by the Judicial Magistrate, Mirzapur in complaint case No. 297 of 2009 summoning the petitioners to face the trial under

Section 328/304 IPC. It is further prayed that non-bailable warrant dated 14.9.2017 issued against the petitioners may also be quashed.

4. The brief facts of the case are that the complainant has lodged a first information report on 20.5.2009 at 6.15 AM of the occurrence which took place at 4.00 PM on 19.5.2009 that his son Dharam Raj Mishra was married with Suman, daughter of Phool Chandra in the year 1997. As the conduct of his daughter-in-law Suman was not good, his son Dharam Raj Mishra has filed a suit for divorce in the court at Mirzapur. Being enraged by the filing of the suit, Suman Devi, Phool Chandra, Bal Chandra, Neelesh, Daya Shanker and Santosh Kumar have given an application on 17.5.2009 at the police station Kotwali Dehat, district Mirzapur. The concerned station officer detained the complainant along with his son at the police station from 4.00 PM to 10.00 PM and thereafter got the matter compromised and asked his son Dharam Raj Mishra to bring back his wife to her matrimonial home. On 19.5.2009 at about 4.00 PM, his son Dharam Raj Mishra along with Prem Bahadur Lal Srivastava had gone to village Tulsi, police station Lalganj to take his wife back. Thereupon, cousin of Suman took Prem Bahadur Lal Srivastava to Mirzapur. Suman Devi, Phool Chandra, Bal Chandra, Neelesh Kumar, Daya Shanker alias Bhale and Santosh Kumar have assaulted his son Dharm Raj Mishra and have administered some poisonous substance in tea, on account of which he died at his Sasural. On the basis of the aforesaid report, a case was registered as case crime No. 171 of 2009, under Section 306 IPC, police station Lalganj, district Mirzapur.

5. After lodging of the FIR, the investigation was conducted and since no credible evidence was found against the petitioners, final

report was submitted by the police on 23.6.2009, against which respondent No. 2 filed protest petition on 20.9.2010. The protest petition was allowed and further investigation was ordered. Again on 26.12.2010 the investigating officer found no credible evidence against the petitioners and again submitted final report. Against the submission of the second final report, complainant has filed protest petition on 24.10.2011 and the learned Magistrate vide order dated 12.4.2012 rejected the final report and directed the Station House Officer, Lalganj to further investigate the matter and submit the report within sixty days.

6. However, it appears that the investigation was going on in pursuance of the order of the learned Magistrate dated 12.4.2012, and in the meantime, the complainant has filed an application on 10.2.2016 before the court concerned with the prayer that since the investigation is still pending, the application may be treated as complaint. The said application was allowed and was treated as complaint vide order dated 27.4.2016 and after recording the statement of the complainant and witnesses under Section 200 and 202 Cr.P.C., the learned Magistrate, Mirzapur has summoned the petitioners vide order dated 20.3.2017 to face the trial. The revision filed against the said order was also dismissed.

7. It is submitted by the learned counsel for the petitioners submits that the learned Magistrate has committed a manifest error of law in treating the application as a complaint when the investigation was pending.

8. Learned counsel for the petitioners submitted that the learned Judicial Magistrate without waiting for outcome of investigation carried out against the petitioners, which was going on in pursuance of the order of the learned Magistrate dated 12.04.2012

allowed application dated 10.02.2016 by the complainant/respondent No.2 and treated the said application as complaint vide order dated 27.04.2016. Summoned the petitioners vide order dated 20.03.2017 to face the trial and the learned revisional court dismissed the revision filed by the revisionists by the impugned order dated 22.12.2019 without considering the grounds taken in revision in proper prospective.

9. Learned Magistrate while taking the intermediate application moved by the complainant as complaint and summoned the accused applicants to face the trial, it cannot be treated as valid and legal exercise of jurisdiction.

10. Per contra, learned counsel for the respondents submits that he has no objection, if the impugned orders passed by the Courts below are set aside and informant/complainant is given an opportunity to file protest petition in support of his FTR against final report filed on completion of the further investigation, as directed by the learned Magistrate. As the report of the further investigation have been received in the court below and a copy of concluding Parcha of case diary is filed as Annexure No.14 to the present writ petition, in which the Investigating Officer in his report dated 18.04.2017 concluded that no said evidence has been found against Suman Devi and others under section 306 IPC, whereas summoning order has been passed by the court below under sections 328, 304 IPC against the accused petitioners, therefore, the impugned order may be set aside with the direction to the parties to seek legal and appropriate remedy before the court below as learned Magistrate has every right in the matter to pass proper order after giving opportunity of hearing to the informant.

11. On the basis of above discussion and perusal of the impugned

order and record, the impugned orders passed by the courts below are not sustainable under law whereby the application moved by the informant has been treated as complaint and the petitioners have been summoned as accused to face trial under sections 323, 304 IPC. The impugned orders suffer from vice of illegality and therefore impugned orders are liable to be set aside. Impugned orders are set aside.

12. Both the petitions are **allowed**.

13. The Court of first instance is directed to hear and dispose of the final report submitted by the Investigating Officer dated 18.04.2017 after giving opportunity of hearing to the complainant/informant and pass appropriate order therein. The informant/respondent no.2 has a right to file protest petition on the said final report and if it is filed, the same will be disposed of along with final report in accordance with law.

Order Date :- 9.11.2023

SFH