

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 6955 of 2023

Petitioner :- Tarana

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Radhey Shyam Yadav

Counsel for Respondent :- G.A.

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Shri Radhey Shyam Yadav, learned counsel for the petitioner and learned AGA for the State and perused the record.

2. This petition under Article 227 of Constitution of India has been filed by the petitioner with the prayer to set aside the order dated 10.03.2023, passed in Criminal Revision No. 158 of 2021 as well as the order dated 08.10.2021 passed by the Chief Judicial Magistrate, Farukhabad, in Misc. Case No. 320/11/2011, Tarana versus Zaki and others, whereby the application of petitioner moved under section 156 (3) Cr.P.C. was dismissed.

3. The relevant facts are as below:

4. The applicant filed an application under section 156 (3) Cr.P.C. against two persons named therein and two unknown, with the allegations in nutshell that opposite party Zaki and Lucky, with two unknown persons intruded in her house on 16.12.2019 at 9.00 AM and forcibly took her to the verandah of her house and they committed rape on her on gun point. They threatened her and also damaged her mobile, therefore, she could not inform anybody else. Her mother who was in the neighbour's house and her son Kamran came in and tried to chase them. Both of them were beaten and were threatened to not to inform the police.

5. The applicant was heard. The learned trial court observed that the applicant earlier lodged an F.I.R. Crime No. 217 of 2019 under section 376, and 506 I.P.C. against certain persons and after investigation, the case was closed by filing final report. She moved another application under section 156 (3) Cr.P.C. against certain persons with the same kind of allegations. Thereafter, she has moved the instant application under section 156 (3) Cr.P.C. The trial court also found that an F.I.R. has been lodged against the applicant herself i.e. Crime No. 49 of 2020 under section 385 I.P.C. The learned trial court also found that there was no medical to support the allegations. Thereafter, the learned trial court referred to judgment given in **Smt. Priyanka Srivastava and others Vs. State of U.P. and others, Criminal Appeal No. 781/12 decide on 19.03.2015**, wherein it was observed as below:

"a stage has come in this country where Section 156 (3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations."

6. The Supreme Court further observed that the kind of applications which are being filed in a routine manner, without taking any responsibility whatsoever, with the aim and objective to harass certain persons, precautions need to be taken. In view of such a feeling expressed by the Supreme Court, the Supreme Court ordered that every application should be supported by an affidavit so that unscrupulous litigant may be deterred from casually invoking the authority of the Magistrate. The Supreme court has by its judgment found it fit to give an implied permission to verify the truthfulness of the allegations.

7. In my view, it is bounden duty of the courts, whether the trial courts or any superior courts, to see that the apparatus of law do not become a tool in the hands of any person, who is out to settle scores with opposite party or out to derive some kind of advantage. The learned trial court did not find substance in the allegations and dismissed the application giving reasons. The learned revisional court agreed with the view taken by the trial court.

8. In my opinion, no good ground to interfere in the impugned orders in exercise of powers under Article 227 of the Constitution of India is made out.

9. Hence, this petition is **dismissed**.

Order Date :- 13.10.2023
RKM