

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 7084 of 2023

Petitioner :- Vipin And 3 Others

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Ajay Kumar Pandey

Counsel for Respondent :- G.A.

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Ajay Kumar Pandey, learned counsel for the petitioners and Sri L.D. Rajbhar, learned AGA for the State.

2. This petition has been filed with a prayer to stay the effect and operation of the order dated 10.08.2022 passed by the Additional Chief Judicial Magistrate, Baghpat in complaint case no. 1470 of 2022 (Sanjeev Kumar vs. Vipin and others), by which the petitioners have been summoned under sections 452, 323, 504, 506 IPC as well as judgment and order dated 13.06.2023 passed by the Additional District and Session Judge/Fast Track Court no. 1, Baghpat in criminal revision no. 158 of 2022 (Vipin and others vs. Sanjeev Kumar and another).

3. The submission of the petitioners are that the complaint has been filed with false and concocted story. The learned trial court as well as the revisional court did not apply its judicial mind and passed the impugned orders in an arbitrary manner. The fact of the matter is that the petitioner no. 2 had lodged an FIR case crime no. 940 of 2020 under section 366 IPC in respect of his missing sister Jyoti. In the aforesaid case, after investigation a chargesheet was submitted against OP no. 2 and few others. OP no. 2 in order to exert pressure on the petitioners, for the purpose of withdrawal of the case, came to them on 28.10.2021 at about 05.30 pm and threatened them, therefore, an FIR case crime no. 1087 of 2021 under sections 147, 504, 506 IPC was lodged, in which a chargesheet has been submitted. This complaint case has been filed just to exert pressure and to take revenge. It is further contended that OP no. 2 is a man with criminal history and he has been involved in several other cases as well.

4. It is contended by the learned AGA that on the basis of a complaint filed by OP no. 2, the court proceeded to record the evidence under sections 200 and 202 Cr.P.C. The court proceeded to pass the impugned order summoning the petitioners finding that prima facie case against them, was made out. It is argued that petitioners could not point out any defect in the order whether factual or legal, which could justify interference in the impugned order.

5. I perused the material on record. From the papers on record, it is clear that the complainant filed an application under section 156(3) Cr.P.C., which is treated as complaint, with the story that at about 11 pm on 28.10.2021, the accused persons intruded in his house throwing foul words on him and also threatening him. They physically assaulted not only the complainant but also his wife. His wife-Deepa as CW1 and one Rame as CW2 were examined

under section 202 Cr.P.C. and they supported the complaint case. The learned trial court, on the basis of the statements given by them, found a prima facie case under sections 452, 323, 504, 506 IPC, having been made out. The petitioners have challenged the order in revision, however the revision was dismissed.

6. In my opinion, the petitioners could not point out any factual or legal defect worth consideration for exercise of powers under Article 227 of the Constitution of India. The statements given by the complainant and his witness prima facie made out a case. Whatever has been said/contended by the petitioner in his petition can only be adjudicated upon at trial after examination of witnesses.

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, no reason for interference is made out. Hence, the petition is **dismissed**.

Order Date :- 7.12.2023

#Vikram/-