

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 7151 of 2023

Petitioner :- Daya Shankar Agnihotri @ Kallu

Respondent :- State of U.P.

Counsel for Petitioner :- Vidya Kant Rai

Counsel for Respondent :- G.A.

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Vidya Kant Rai, learned counsel for the petitioner and Sri L.D. Rajbhar, learned A.G.A. for the State.

2. The relevant facts are as below.

3. The accused Daya Shankar Agnihotri, who is the petitioner herein, is facing trial in Session Case No. 909 of 2020 under section 307 I.P.C. and Session Case No. 117 of 2020 under section 3/25 Arms Act, since about last three year.

4. He moved applications on 24.05.2023 and 25.05.2023 in the sessions trial noted above, respectively, with the prayer that the provisions of section 207 Cr.P.C. have not been complied with, therefore, it is difficult for him to get justice and that he may be provided with a copy of charge sheet and other prosecution papers. The learned Sessions Judge decided both the applications by a single order dated 07.06.2023 whereby he dismissed the applications and posted the case for recording of statements under section 313 Cr.P.C. Now, the accused is before this Court challenging the aforesaid order.

5. The submission of the petitioner is that, that the compliance of provisions of section 207 Cr.P.C. is mandatory and that prosecution is bound to provide copies of prosecution papers, before the trial court proceeding begins. To support his arguments, my attention has been drawn to the copies of the order sheets drawn by the court concerned. On the basis of the order sheet dated 07.10.2020 drawn in Sessions Case No. 117 of 2022, (Crime No. 865 of 2020 under section 307 I.P.C.) and order sheet dated 22.12.2021 drawn in Sessions Trial No. 3397 of 2020, (Crime No. 865 of 2020 under section 3/25 of Arms Act), it is argued that though both the order sheets mention that the copies of the papers have been provided to the defence side, however, there is no acknowledgement/endorsement of receiving the same.

6. A perusal of the impugned order reveals that the Additional Sessions Judge, on the basis of the relevant order sheets, drew an inference that in fact, provisions of section 207 were duly complied with and that the applications have been moved without any substance and rejected them. The learned trial court in para-18 of the order made certain observations as below:

"18- धारा 207 दं०प्र०सं० में अभियुक्त को पुलिस रिपोर्ट व अन्य दस्तावेजों की प्रतिलिपि देने के संबंध में प्रावधान उपबन्धित है। पुलिस रिपोर्ट के आधार पर सस्थित मामले में अभियुक्त को उक्त दस्तावेजों की प्रतिलिपि दिलाएं जाने के पीछे उद्देश्य उसे अभियोजन पक्ष के मामले को समझने, उसका खण्डन करने एवं अपनी प्रतिरक्षा प्रस्तुत करने का अवसर प्रदान करना है। दाण्डिक विधिशास्त्र का सुस्थापित सिद्धान्त है कि अभियुक्त को अपने मामले की प्रतिरक्षा का पूर्ण एवं समुचित अवसर मिलना चाहिए। यह तभी संभव है जब अभियुक्त को उन सभी दस्तावेजों की प्रतिलिपियां उस आरंभिक स्तर पर ही उपलब्ध करा दी जाए जिस पर अभियोजन पक्ष निर्भर करता है। यदि अभियोजन मामले से सम्बन्धित दस्तावेज उपलब्ध न कराई गई हो, तो अभियुक्त, अभियोजन पक्ष के मामले को न समझ सकता है और न ही अपनी प्रतिरक्षा करने में समर्थ हो सकता है। प्रस्तुत प्रकरणों में अभियुक्त की ओर से उसके तत्समय विद्वान अधिवक्तागण द्वारा अभियोजन साक्षीगण की विस्तार से की गयी प्रतिपरीक्षा अभियुक्त को दं०प्र०सं० की धारा 207 के अनुपालन में प्रकरण से सम्बन्धित अभियोजन अभिलेखों की प्रतियाँ प्रदत्त किये जाने के परिलक्षित करता है क्योंकि अभियोजन अभिलेखों के बिना अभियुक्त के विद्वान अधिवक्तागण द्वारा अभियोजन मामले को समझते हुए साक्षीगण की प्रतिपरीक्षा किया जाना और अभियुक्त के बचाव हेतु सुझाव के प्रश्न पूछा जाना सम्भव नहीं था। अभियुक्त के विद्वान अधिवक्ता द्वारा अवलंब लिए गए विधि व्यवस्था में माननीय न्यायालय के संप्रेक्षण से असहमत होने का प्रश्न ही नहीं है, परन्तु उक्त विधि व्यवस्थाएं प्रस्तुत प्रकरण के तथ्य और परिस्थितियों से भिन्न होने के कारण लागू नहीं होती है।"

7. Definitely, there is a certain purpose behind incorporating provisions of section 207 and 208 of Cr.P.C. There is no reason to doubt that in fact, the copies were provided to the applicant as mentioned in the relevant order sheets by the court. There is no legal requirement that accused should write on the margin of order sheet acknowledging that he, in fact, received the copies. Such practice is adopted as matter of caution and not as a matter of law. It may be noted that relevant order sheet bears his signatures. In my view, have the things been otherwise, there was no reason for the accused person to keep mum for all the three years while the prosecution kept on producing all the witnesses and the accused cross examined them.

8. In my view the petition has no substance and has been moved just to buy time for the purpose of delaying the trial court proceeding. In the circumstances noted above, I find it fit to dismiss this petition and impose a cost upon the petitioner so that practice of filing casual and superfluous petition is discouraged.

9. The petition is **dismissed** with cost of **Rs. 10,000/-**.

10. The petitioner is directed to deposit this cost within a period of 15 days from today, with the Registry of this Court. In case of failure to do so, the Registry shall issue a recovery certificate to District Magistrate concerned, who shall take steps for recovery of the same, as arrears of land revenue. When the amount is deposited or recovered, the same shall be transferred in favour of the State.

11. A copy of the order be immediately notified to the court concerned.

Order Date :- 1.11.2023

Sumit Kumar