

Court No. - 92

Case :- APPLICATION U/S 482 No. - 29448 of 2023

Applicant :- Abhishek Sirohi

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Nafees Ahmad, Sr. Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Anil Srivastava, learned Senior Counsel assisted by Sri Nafees Ahmad, learned counsel for the applicant and Sri K.K. Tripathi, learned A.G.A. for the State.

2. The instant application has been filed seeking quashing of the impugned order dated 23-06-2023 passed by the learned Additional District & Sessions Judge, Court No.15, Saharanpur in Criminal Revision No. 87 of 2020 (Shilpy Vs. State and Others), arising out of Case Crime No. 116 of 2019, under Section 302 IPC, P.S. Deoband, district Saharanpur.

3. Learned Senior Counsel appearing for the applicant submits that in the instant case final report was submitted by the police which was protested by the opposite party no.2 and the said protest petition was rejected by the learned Magistrate and the final report was accepted against which a revision-petition being Criminal Revision No. 87 of 2020 was filed by the opposite party no.2, which has been allowed by the learned Revisional Court and while setting aside the order dated 06-02-2019 passed by the learned Magistrate, the Revisional Court has remanded back the matter to the learned Magistrate with an observation that the Magistrate shall pass a fresh order in accordance with law in the light of the observations made in the order passed by the learned Revisional Court.

4. Learned Senior Counsel appearing for the applicant further submits that the Revisional Court has exceeded its jurisdiction while directing the Magistrate to pass the order afresh in the light of the observations made by the learned Revisional Court, which may prejudice the learned Magistrate.

5. This Court has carefully gone through the judgment and order dated 23-06-2023 passed by the learned Revisional Court. The learned Revisional Court in paragraph 12 has found that while passing the order dated 06-12-2019 the learned Magistrate has not

considered the diary and mobile and the call details of the said mobile, which was sealed and deposited in the 'Malkhana' has not been investigated by the Investigating Officer and has not been considered by the learned Magistrate, therefore, the learned Revisional Court has directed that the learned Magistrate shall consider the aforesaid aspect of the matter and will pass the fresh order in accordance with law, therefore, prima facie this Court does not find any illegality in the judgment and order dated 23-06-2023 passed by the learned Additional District & Sessions Judge, Court No.15, Saharanpur in Criminal Revision No. 87 of 2022.

6. It is made clear that the learned Magistrate while passing the fresh order as directed by the learned Additional District & Sessions Judge shall consider the diary and mobile of the deceased which was deposited in the 'Malkhana' prior to the initiation of the investigation and may call for an inquiry from police on this aspect of the matter and shall pass a fresh order in accordance with law without being influenced by any of the observations made in the judgment and order dated 23-06-2023 passed by the learned Revisional Court.

7. With the aforesaid observations, the instant application stands disposed of.

Order Date :- 30.10.2023

pks