

Court No. - 93

Case :- APPLICATION U/S 482 No. - 30420 of 2023

Applicant :- Dharam Pal Singh And 7 Others

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

Counsel for Applicant :- Ajay Kumar Jagdish, Sunil Kumar

Counsel for Opposite Party :- G.A., Shyam Surat Shukla

Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard Sri Sunil Kumar, along with Sri Ajay Kumar Jagdish, learned counsel for the applicants, Sri Shyam Surat Shukla, learned counsel appearing on behalf of the first informant and Sri A.K. Sand, learned Government Advocate assisted by Sri Rajeev Kumar Singh, learned AGA for the State.

2. In pursuance of the order dated 13.10.2023, Sri K. Satyanarayana, Additional Director General, CBCID has filed affidavit mentioning therein that in pursuance of the order dated 08.12.1999 of the State Government, investigation was taken over by the CBCID on 19.01.2000 and, thereafter, after completion of the investigation, CBCID has submitted original case diary before the learned Chief Judicial Magistrate, Baghpat on 17.01.2019. This fact was neither disputed by the learned counsel for the applicants nor by the learned Chief Judicial Magistrate, Baghpat (who is also present personally through video conferencing). However, a question was raised by learned counsel for the applicants that though the case diary in original has been submitted but police report in the format prescribed u/s 173(2) Cr.P.C. has not been filed till date which is mandatory in nature.

3. From perusal of record, it appears that by the impugned

order dated 31.07.2023, learned Chief Judicial Magistrate, Baghpat has rejected the application of the applicants dated 06.06.2023 by which request was made that before proceeding further, learned Magistrate should call report from CBCID regarding completion of investigation and status of withdrawing case as per recommendation of CBCID. By the impugned order, learned Chief Judicial Magistrate, Baghpat after rejecting the application of the applicants on the ground that till date no report/format has been filed regarding withdrawal of prosecution on the basis of report of CBCID also issued non-bailable warrant against the applicants.

4. On the other hand, Sri A.K. Sand, learned Government Advocate has submitted that CBCID after completion of investigation in pursuance of the order of the State Government submitted his report u/s 173(8) Cr.P.C., though, format if required by Section 173(2) Cr.P.C. has not been submitted because in the case of further investigation by the CBCID, no such format has been prescribed. It is further submitted by learned Government Advocate that if court directs then the CBCID will prepare the format as required u/s 173(2) Cr.P.C., and same will be submitted within a week before the learned Chief Judicial Magistrate, Baghpat. It is undisputed fact that CBCID has completed investigation and submitted its report on 17.01.2019 before the learned Chief Judicial Magistrate, Baghpat but the procedure prescribed u/s 173(2) Cr.P.C. regarding submission of final police report has not been followed.

5. Learned Magistrate while passing the impugned order did not consider the above aspect, therefore, the order dated

31.07.2023 passed by the learned Chief Judicial Magistrate, Baghpat, is hereby quashed.

6. In view of the above circumstances, this Court directs the CBCID to submit the police report in proper format as prescribed u/s 173(2)(i) Cr.P.C., within a period of one week, from today. On submission of the aforesaid final police report u/s 173(2)(i) Cr.P.C. by the CBCID, learned Chief Judicial Magistrate, Baghpat will proceed further in accordance with law and pass fresh order after hearing the parties, within a period of two weeks from the date of receiving the final police report of CBCID as per format prescribed u/s 173(2) Cr.P.C.

7. It is further provided that for a period of one month or till passing of the fresh order, whichever is earlier, no coercive action shall be taken against the applicants.

8. With the aforesaid direction, present application is **disposed of**.

9. Presence of Sri K. Satyanarayana, Additional Director General, CBCID, and learned Chief Judicial Magistrate, Baghpat, is exempted.

10. This court also appreciates valuable assistance by the learned Chief Judicial Magistrate, Baghpat as well as Sri A.K. Sand, learned Government Advocate.

Order Date :- 31.10.2023

S.Chaurasia