

Court No. - 9

Case :- CONTEMPT APPLICATION (CIVIL) No. - 5881 of 2022

Applicant :- Mohd. Wakeel @ Shaanu

Opposite Party :- Sri Shailesh Kumar Pandey, S.S.P. And Another

Counsel for Applicant :- Shashank Mishra, Anant Kumar Mishra

Hon'ble Rohit Ranjan Agarwal, J.

Heard learned counsel for the applicant and learned Standing Counsel.

This Court in Application u/S 482 No.6066 of 2022 on 14.3.2022 passed the following order :

"Heard learned counsel for applicant and learned counsel for Informant along with learned AGA for State.

The present application under Section 482 Cr.P.C. has been filed by applicant for quashing the entire proceedings of Sessions Trial No. 328 of 2019 (Case Crime No. 132 of 2018) under Sections 302, 307, 120B/34 IPC and 7 CrL. Law (Amendment) Act, 1938, Police Station Phoolpur, District Allahabad and pending in the Court of Additional Sessions Judge III, Allahabad and to appreciate the electronic evidence.

Learned counsel for applicant submits that applicant is innocent. He has committed no offence. He has been falsely implicated over the previous rivalry. He is a reputable person. At the time of incident, he was given a gunner by administration for his security in the house of the applicant, which shows that applicant was in his house at the time of incident. It reflects the innocence of accused in the aforesaid case. Investigating Officer did not even recorded the statement of applicant's gunner, who was himself a police official. Although the applicant requested the Investigating Officer to check the CCTV Cameras and send it for examination to know the truth of prosecution story but he, under the pressure of opposite party, did not collect proper evidence. In this respect, he moved an application before the court below but the same was rejected.

He further submits that applicant is in Jail, therefore, there cannot be the intention of the applicant to remain his case pending. He wants justice. Learned counsel for the applicant further submits that if those evidence is not collected by Investigating Officer or it is not made a part of case diary, accused-applicant would not defend himself properly even in defence. Applicant would not be successful to get CCTV Camera examined and he shall suffer irreparable loss and injury. Learned counsel for applicant showed some papers, photographs and statements in favour of his contention.

On the other hand, learned AGA as well as learned counsel for the Opposite Party opposed the submission by submitting that applicant may raise his entire grievance at the time of statement under Section 313 Cr.PC or defence evidence but prosecution cannot be compelled to produce the aforesaid evidence from its side as it is not part of case diary. The plea of alibi is the matter of defence.

Normally alibi plea is proved in defence but nature of evidence, which is said to be collected, is electronic evidence. It is also notable that applicant was provided a gunner for his safety. His statement should be recorded by the Investigating Officer to come to any conclusion. Investigating Officer is not simply a clerk who is bound to support the prosecution case and submit charge sheet. He is expected to investigate the matter independently and thoroughly, if there was CCTV Cameras. It was the duty of the Investigating Officer to collect and get it checked to deal with the fair investigation and electronic evidence should be made a part of case diary.

After hearing the lengthy submission made by the learned counsel for parties and perusing the record, I am not inclined to quash the charge sheet.

However, reserving the right of the applicant to move an application before the SSP concerned, it is directed to SSP concerned to pass order directing further investigation under Section 173 (8) Cr.PC, if any application is preferred. During further investigation, whichever evidence is found shall be forwarded to the court concerned.

Entire exercise must be completed expeditiously and preferably within a period of three months from the date of production of a certified copy of this order.

The application under Section 482 Cr.P.C. is accordingly disposed of with the above terms."

From perusal of the order it is clear that the Court had not entered into the merits of the case and had held that it is not inclined to quash the charge sheet. However, the Court had given leverage to the applicant to move an application before SSP concerned who shall process the application and if necessary, pass an order for further investigation in terms of Section 173(8) Cr.P.C. The applicant had moved an application upon which further investigation was conducted and the report was submitted.

As the order passed by this Court has been complied with, no case for contempt is made out. The contempt application is misconceived. Dismissed.

Order Date :- 23.11.2023

Kushal