

Court No. - 91

Case :- APPLICATION U/S 482 No. - 32886 of 2023

Applicant :- Ajad Rai And 3 Others

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Veerendra Singh, Sr. Advocate

Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar, J.

1. Heard Sri V.P. Srivastava, learned Senior Advocate appearing for the applicants and learned AGA for the State.

2. The present application u/s 482 Cr.P.C. has been filed by the applicants with the prayer to quash the quash the impugned order dated 23.05.2023 passed by Civil Judge (Senior Division)/F.T.C./A.C.J.M., Azamgarh directing for further investigation in F.I.R. No.42 of 2020, under Sections 419, 420, 467, 468, 471 IPC, Police Station Devgaon, District Azamgarh.

3. Learned counsel for the applicants submits that the applicant no.1 is the Ex-service man on the recommendation land was allotted in his favour and the possession was given. Further submission is that on the false and frivolous allegation, the F.I.R. has been lodged against the applicants. Further submission is that after completing the investigation, the Investigating Officer was submitted final report on 24.10.2020 against which, the protest petition was filed and the same was allowed and order for further investigation was passed by the court concerned vide order dated 15.04.2022. Further submission is that against second time, final report was filed by the Investigating Officer on 24.08.2022 and protest petition was again filed, which was allowed vide order dated 23.05.2023 for further investigation. The main submission of learned counsel for the applicants is that the repeated order being passed by the court concerned for further investigation, which is nothing but an abuse of process of court. Further submission is that in law, there are other options, which can be availed by the court after considering the facts and

circumstances of the case. Further submission is that the learned Magistrate has passed order in a mechanical way without considering the other option to be taken into account while passing order on the protest petition. Learned counsel for the applicants has placed reliance upon the judgement of Hon'ble Apex Court in the case of ***H.S. Bains Vs. The State (Union Territory of Chandigarh)***, AIR 1980 SC 1883, in which paragraph no.6 is quoted as under:-

"It is seen from the provisions to which we have referred in the preceding paragraphs that on receipt of a complaint a Magistrate has several courses open to him. He may take cognizance of the offence and proceed to record the statements of the complainant and the witnesses present under Sec. 200. Thereafter, if in his opinion there is no sufficient ground for proceeding he may dismiss the complaint under Sec. 203. If in his opinion there is sufficient ground for proceeding he may issue process under Sec. 204. However, if he thinks fit, he may postpone the issue of process and either enquire into the case himself or direct an investigation to be made by a Police Officer or such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. He may then issue process if in his opinion there is sufficient ground for proceeding or dismiss the complaint if there is no sufficient ground for proceeding. On the other hand, in the first instance, on receipt of a complaint, the Magistrate may, instead of taking cognizance of the offence, order an investigation under Sec. 156(3). The police will then investigate and submit a report under Sec. 173(1). On receiving the police report the Magistrate may take cognizance of the offence under Sec. 190(1)(b) and straightaway issue process. This he may do irrespective of the view expressed by the police in their report whether an offence has been made out or not. The Police report under Sec. 173 will contain the facts discovered or unearthed by the police and the conclusion drawn by the police therefrom. The Magistrate is not bound by the conclusions drawn by the Police and he may decide to issue process even if the Police recommend that there is no sufficient ground for proceeding further. The Magistrate after receiving the Police report, may, without issuing process or dropping the proceeding decide to take cognizance of the offence on the basis of the complaint originally submitted to him and proceed to record the statements upon oath of the complainant and the witnesses present under Sec. 200 Criminal Procedure Code and thereafter decide whether to dismiss the complaint or issue process. The mere fact that he had earlier ordered an investigation under Sec. 156(3) and received a report under Sec. 173 will not have the effect of total effacement of the complaint and therefore the Magistrate will not be barred from proceeding under Sections 200, 203 and 204. Thus, a Magistrate who on receipt of a complaint, orders an investigation under Sec. 156(3) and receives a police report under Sec. 173(1), may, thereafter, do one of three things: (1) he may decide that there is no sufficient ground for proceeding further and drop action; (2) he may take cognizance of the offence under Sec. 190(1)(b) on the basis of the police report and issue process; this he may do without being

bound in any manner by the conclusion arrived at by the police in their report: (3) he may take cognizance of the offence under Sec. 190(1)(a) on the basis of the original complaint and proceed to examine upon oath the complainant and his witnesses under Sec. 200 If he adopts the third alternative, he may hold or direct an inquiry under Sec. 202 if he thinks fit. Thereafter he may dismiss the complaint or issue process, as the case may be"

4. On the other hand, learned AGA has opposed the prayer and submitted that the concerned Magistrate in his discretion has passed the order. There is no illegality in the impugned order but in the law he has other option, which should have been considered.

5. Keeping in view the submission and contention of learned counsel for the parties and from the perusal of the record, it is apparent that after completing the investigation, the Investigating Officer has submitted final report repeatedly and the protest petition file repeatedly and order for further investigation has been passed repeatedly in a mechanical way without going into the other options to be taken by the learned Magistrate on the protest petition filed by the first informant.

6. In view of the above, the present application is disposed off with the direction to the court concerned to pass afresh order after taking other options into considerations with regard to final report filed by the Investigating Officer and protest petition filed by the first informant.

7. In view of the such facts, the order dated 23.05.2023 is here by set aside.

8. With the aforesaid observations, the present application u/s 482 Cr.P.C. is finally **disposed off.**

Order Date :- 1.11.2023

Sanjeet