

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 13324 of 2023

Petitioner :- Shivnath And 7 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Mithilesh Kumar Shukla

Counsel for Respondent :- G.A., Phool Singh Yadav, Vaibhav Yadav

Hon'ble Vivek Kumar Birla, J.

Hon'ble Vinod Diwakar, J.

1. Short counter affidavit and affidavit of compliance filed today by learned counsel for the parties are taken on record.

2. Heard Sri Mithilesh Kumar Shukla, learned counsel for the petitioners, Sri Phool Singh Yadav, learned counsel appearing for the informant and Sri G.P. Singh, learned A.G.A. appearing for the State respondents.

3. Present petition has been filed for quashing the first information report dated 6.8.2023 registered as Case Crime No. 361 of 2023, under Sections 498A, 323, 313, 504, 506, 306, 406 IPC and Section 3/4 of D.P. Act, Police Station Bidhanu, District Kanpur Nagar. Further prayer has been made to not to arrest the petitioners in the aforesaid case.

4. on 2.11.2023 following order was passed:-

"1. Heard Shri Mithilesh Kumar Shukla, learned counsel for the petitioners and Shri Phool Singh Yadav, learned counsel for the informant and Shri G.P. Singh, learned AGA for the State.

2. On 11.10.2023 following order was passed:-

"1. Heard Sri Mithilesh Kumar Shukla, learned counsel for the petitioners, Sri Phool Singh Yadav, learned counsel appearing for the informant and Sri Ratan Singh, learned A.G.A. appearing for the State respondents.

2. This writ petition has been filed praying to quash the first information report dated 6.8.2023 registered as Case Crime No. 361 of 2023, under sections 498A, 323, 313, 504, 506, 306, 406 IPC and Section 3/4 of D.P. Act, Police Station Bidhanu, District Kanpur Nagar. Further prayer has been made not to arrest the petitioners in the aforesaid case.

3. By drawing attention to the contents of the First Information Report that one written agreement had taken place between the parties to the effect that a final settlement after death of the husband had taken place between the informant and in-laws.

4. A demand draft issued by Delhi Kamal Model School Branch of ICICI Bank bearing No. 502694 dated 30.9.2023 of Rs. 6 lacs has been produced before this Court by learned counsel for the petitioners, which is taken on record.

5. Registrar General of this Court is directed to keep the aforesaid demand draft in safe custody until ordered otherwise.

6. At this stage, learned counsel appearing for the informant submits that the matter may be deferred for two weeks so that the Investigating Officer may record necessary statements.

7. Put up this case as fresh on 27.10.2023. In the meantime, the Investigating Officer shall proceed to record the statement of the informant and shall forward the status of the investigation through learned A.G.A. by the next date.

8. Till the next date of listing, no coercive action shall be taken against the petitioners.

9. Learned counsel for the parties undertake to remain present in the first call on the next date.

10. Photocopy of the demand draft produced today shall be kept in the order-sheet."

3. Pursuant to aforesaid order, counter affidavit filed by Vineet Kumar, Sub Inspector, Police Station Bidhnu, District Kanpur Nagar is taken on record.

4. Paragraph 7, 8, 10 and 11 of the said counter affidavit are quoted as under:

"7. That vide C.D.-2, the investigating officer searched for the informant but she was not present at the house and investigating officer got information that she went to her relatives house.

8. That vide C.D.-3, the investigating officer went to house of the informant and she was not present there and on investigating officer got information that her health condition is not good and she went to get the medicine.

10. That vide C.D.-5, the investigating officer went to house of the informant and she was not present there and on investigating officer got information that her health condition is not good and she went to get the medicine.

11. That vide C.D.-6 & 7, the investigating officer went to house of the informant and she was not present there and door was locked and persons of locality did not gave any information and the informant tried to communicate her one telephonic call."

5. According to above quoted paragraphs the Investigating Officer had tried his best to communicate the informant but he was being constantly informed that her health condition is not good and she went to get the medicine. It has also been highlighted that as no coercive action can be taken, therefore, nothing can be done for securing her presence for the purpose of recording her statement.

6. The amount mentioned in the impugned First Information Report has already been deposited through Bank Draft before this Court.

7. In this background, we direct that the informant respondent no.3 shall remain present before the Investigating Officer, Police Station-Bidhanu, District Kanpur Nagar on 09.11.2023 at 11.00 AM for recording her statement. She would also be at liberty to accompanying with her lawyer or any other responsible person. We also direct that the Investigating Officer shall record her statement and send a copy of the same to this Court for consideration.

8. Put up this case as fresh on 20.11.2023.

9. Learned AGA is directed to send copy of this order to the Commissioner of Police, Commissionerate, Kanpur Nagar for issuing necessary orders/direction, if any required in the present case.

10. Till the next date of listing, no coercive action shall be taken against the petitioners."

5. Pursuant to the aforesaid order the informant had appeared before the Investigating Officer and her statement under Section 161 Cr.P.C. has been recorded on the date fixed i.e. 9.11.2023. A copy whereof has been annexed as Annexure-1 to the short counter affidavit.

6. Learned A.G.A. on instructions submits that such statement has been recorded by the Investigating Officer.

7. In such view of the matter, we dispose of present petition by directing the Investigation Officer to take into consideration the statement of the informant recorded under Section 161 Cr.P.C. and conclude the investigation as expeditiously as possible preferably within a period of one month from the date of production of a certified copy of this order. Till then, no coercive action shall be taken against the petitioners as the compromise had already taken place between the parties before lodging of first information report.

8. Pursuant to order dated 11.10.2023 a demand draft of Rs. 6 lacs is still lying deposited with the Registrar General of this Court.

9. It is directed that the same shall be handed over to the informant-Smt. Sonam Kushwaha within 24 hours on her appearing before the Registrar General of this Court after verifying her identity by learned counsel appearing for the informant. It is expected that no delay shall be made in release of the demand draft.

10. With the aforesaid observations, present petition stands disposed of.

Order Date :- 28.11.2023

Lalit Shukla