

Court No. - 40

Case :- WRIT - C No. - 29375 of 2023

Petitioner :- Vijay Vaishya

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

Counsel for Petitioner :- Udai Prakash Deo Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

1. Heard learned counsel for the petitioner and Sri Devansh Rathore, learned Additional Chief Standing Counsel for the State-respondents.

2. The present writ petition is preferred for quashing impugned order dated 28.3.2023 passed by District Magistrate, Sonbhadra whereby the petitioner's application dated 20.12.2022 for issuance of character certificate has been rejected.

3. Learned counsel for the petitioner states that against the petitioner, a case was registered bearing Case Crime No.873 of 2014 under Sections 4 and 21 of Mines and Minerals (Development and Regulation) Act, 1957, Rule 3/57/70 of Minor Mineral (Concession) Rules, 1963 and Section 379 IPC, Police Station-Chopan, District-Sonebhadra. In the aforesaid case, chargesheet was submitted before the competent Court on 21.10.2014 and cognizance/summoning order dated 23.12.2014 was passed. The aforesaid summoning order as well as entire proceeding of Case No.5934 of 2014 (State vs. Vijay Vaishya and another) arising out of Case Crime No.873 of 2014 was the subject matter of challenge in Application u/s 482 No.32870 of 2023. Vide order dated 10.10.2023, the aforesaid application has been partly allowed by the learned Single Judge subject to the fact that, in case, any complaint is filed by the authorised person under Section 4/21 of Mines and Minerals (Development and Regulations) Act, 1957 as well as Rule 3/57/70 of the U.P. Minor Minerals (Concession) Rules, 1963, the learned Magistrate may proceed in accordance with law in the said sections. Further, the proceedings of case under section 379 IPC shall continue against the applicant and brought to logical conclusion in accordance with law.

4. In the aforesaid backdrop, learned counsel for the petitioner

submits that while rejecting the application of the petitioner for issuance of Character Certificate, the second respondent i.e. District Magistrate, Sonbhadra has wrongly placed reliance on the recommendation of third respondent i.e. Superintendent of Police, Sonbhadra which was on the basis of Government Order dated 2.11.2006, inasmuch as, the said Government Order will not apply in the present case. In the present matter, only proceeding has been initiated under the provisions of Mines and Minerals (Development and Regulation) Act, 1957 read with Minor Mineral (Concession) Rules, 1963 and Section 379 IPC was further added. The said case crime under Section 379 IPC is of such nature wherein the petitioner may be denied the Character Certificate for all times to come. Even though in the said proceeding, the petitioner has been bailed out, since except lodging of aforesaid complaint/FIR, the petitioner has no other criminal antecedent. He further submits that reliance placed on Government Order dated 2.11.2006 is unsustainable taking into account the criminal antecedent of the petitioner.

5. Learned Additional Chief Standing Counsel vehemently opposed the writ petition and submitted that admittedly proceeding under Section 379 IPC is pending consideration and in absence of finalization of said proceedings, the respondents have not erred in law in rejecting the issuance of Character Certificate. There is no infirmity or illegality in the impugned order and it requires no interference in the matter. Even though, while passing the order, leave was also accorded to the petitioner to press appeal/application before the Commissioner, Vindhyachal Division, Mirzapur but in spite of approaching remedial forum, the petitioner has not invoked the said forum, hence, no interference is required.

6. Heard the rival submissions of learned counsel for the parties and perused the record. We have occasion to peruse order dated 10.10.2023 passed by the learned Single Judge in aforementioned application under Section 482. It is evident from the findings of the aforesaid order that the proceeding, which has been drawn under the provisions of Mines and Minerals (Development and Regulation) Act, 1957 read with Minor Mineral (Concession) Rules, 1963, has not been approved by the learned Single Judge. Further, the said proceedings has been set aside but at the same time, leave was accorded to the Magistrate to proceed in accordance with law under the said sections. So far as proceeding under Section 379 IPC is concerned, a direction was issued for finalization of the proceeding. No other material has been placed

on record by the State indicating that the petitioner is involved in any other criminal activity. The only case against the petitioner was lodged under the provisions of Mines and Minerals (Development and Regulation) Act, 1957 read with Minor Mineral (Concession) Rules, 1963, which also non suited to the learned Single Judge. However, in the matter of proceeding under Section 379 IPC, the respondent cannot take shelter of Government Order dated 2.11.2006 whereas the criminal antecedents of the petitioner does not give impression to the Court wherein his criminal antecedent may be put in the category as given in the aforesaid Government Order, whereby for all times to come, the Character Certificate of the petitioner can be denied.

7. Considering the facts and circumstances of the case, we are of the considered opinion that the respondent/competent authority i.e. District Magistrate, Sonbhadra may proceed in the matter in accordance with law, but certainly after taking into account Government Order dated 2.11.2006 as well as order dated 10.10.2023 passed by learned Single Judge in Application U/S 482 No.32870 of 2023. Accordingly, order dated 28.3.2023 is set aside.

8. With the aforesaid directions, the writ petition is allowed.

Order Date :- 11.12.2023

Manish Himwan