

Court No. - 92

Case :- APPLICATION U/S 482 No. - 32029 of 2023

Applicant :- Siddhapeeth Maa Shakumbhari Peethadhishwar Mahant Swami Bhrihwanshi Ashutosh Pandey

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

Counsel for Applicant :- Kushagra Agrawal, Suresh Kumar Maurya

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta, J.

1. Supplementary affidavit filed today is taken on record.
2. Heard Sri S.K. Mishra, learned counsel for the applicant and Sri Sandeep Choudhary, learned A.G.A. for the State.
3. The instant application has been filed challenging the order dated 21-07-2023 passed by the learned Chief Judicial Magistrate, Shamli in Case No. 223/11/2022 (Siddhapeeth Maa Shakumbhari Peethadhishwar Mahant Swami Bhrihwanshi Ashutosh Pandey Vs. S.D.M. Kairana, Shamli and Others).
4. As per the application under Section 156(3) Cr.P.C. filed by the applicant the proceedings under Section 145 Cr.P.C. were initiated and a Case No. 01682 of 2019, Computerised Case No. T-201909720401682, Rajendra Kumar and Others Vs. Kushok Chauhan and others is pending before the learned Sub Divisional Magistrate.
5. It is alleged in the 156(3) Cr.P.C. application that on 19-10-2020 the learned Sub Divisional Magistrate, Kairana issued a direction dated 19-10-2020 to the Executive Officer of Municipal Board, Kandhala to make necessary arrangements in the temple during the 'Navratra' festival as the said property of the temple was handed over to the Executive Officer vide order dated 30-08-2019 in terms of Section 146(1) of Cr.P.C.
6. Learned counsel for the applicant further submits that on 19-10-2020 only this order of directing the Executive Officer, Municipal Board, Kandhala to make necessary arrangements in the temple during the 'Navratra' festival was passed, however, in the order-sheet of the said Case No. 01682 of 2019, a different order has been passed by the learned Sub Divisional Magistrate wherein the learned Sub Divisional Magistrate has recorded that "Case Called out. Parties are absent. Written statement is not filed. To be listed

on 29-10-2020 for filing the written statements".

7. Learned counsel for the applicant submits that the said order on the order-sheet has been passed by the learned Sub Divisional Magistrate behind his back, therefore, he has filed an application under Section 156(3) Cr.P.C. seeking an action against the learned Sub Divisional Magistrate.

8. Vide impugned order dated 21-07-2023 the said application under Section 156(3) Cr.P.C. has been dismissed by the learned Chief Judicial Magistrate, Shamli against which the instant application has been filed by the learned counsel for the applicant.

9. Learned A.G.A. for the State submits that the instant application under Section 156(3) Cr.P.C. has been filed by the applicant herein with some illicit motive on the basis of his personal apprehensions and the same is frivolous. From the order-sheet itself, it appears that on 24-09-2020 some application was filed by the applicant herein for which written statement was called for by the learned Sub Divisional Magistrate and the said application is still pending before the learned Sub Divisional Magistrate and the written statement was not filed, therefore, the order dated 19-10-2020 passed on the order-sheet was in continuation of the earlier orders calling for the written statements. However, the communication being letter memo/फौ० अह० dated 19-10-2020 is the communication to the Executive Officer, Municipal Board, Kandhala to whom the disputed property was handed over vide order dated 30-08-2019 passed under Section 146(1) of Cr.P.C. so that necessary arrangements be made during 'Navratra' festival. The said communication cannot be said to be a part of any order passed on that date by the learned Sub Divisional Magistrate, it is only a communication for the management due to the festival. The order dated 19-10-2020 has been passed in continuation of the earlier orders, therefore, there is no illegality and no malafide can be inferred from the order dated 19-10-2020 passed by the learned Sub Divisional Magistrate in a proceeding under Section 145 Cr.P.C., therefore, the learned Chief Judicial Magistrate has rightly dismissed the application under Section 156(3) Cr.P.C. filed by the applicant herein.

10. Having heard the rival submissions made by the learned counsel for the parties, this Court has carefully perused the record of the case. From perusal of the application under Section 156(3) Cr.P.C. it prima facie appears that the applicant himself has claimed that the proceedings under Section 145 Cr.P.C. were

initiated by the learned Sub Divisional Magistrate and the present applicant was made a party in the public interest. The application under Section 156(3) Cr.P.C. challenging the order dated 19-10-2020 has been filed on 17-05-2022 after about two years with some malafide intention. From the perusal of the communication dated 19-10-2020 which has been filed as annexure-2 to the application, it appears that the learned Sub Divisional Magistrate, Kairana has directed the Executive Officer of the Municipal Board, Kandhala to make the necessary arrangements during the 'Navratra' festival as the Executive Officer was appointed as Receiver of the property vide order dated 13-08-2020 in terms of the order passed under Section 146(1) of Cr.P.C.. The said communication has nothing to do with the pendency of the 145 proceeding and the order dated 19-10-2020 passed in the said proceeding was in continuation of the earlier orders wherein on 24-09-2020 the present applicant has filed an application on which the written statement was called for by the learned Sub Divisional Magistrate, therefore, there was no illegality per se in the order dated 19-10-2020 passed by the learned Sub Divisional Magistrate specifically when none of the parties was present before the learned Sub Divisional Magistrate on that date, therefore, in the considered opinion of this Court the application under Section 156(3) Cr.P.C. filed by the applicant herein is a misconceived application filed with malafide intention by the applicant, therefore, there is no illegality in the impugned order dated 21-07-2023 passed by the learned Chief Judicial Magistrate, Shamli.

10. In view of above, the instant application is devoid of merits and is **dismissed** with a cost of Rs. 10,000/- to be deposited within a period of two weeks from today.

Order Date :- 26.10.2023

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