

Court No. - 92

Case :- APPLICATION U/S 482 No. - 32531 of 2023

Applicant :- Sonu Prasad Gupta

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Ramesh Kumar Chaurasia

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Ramesh Kumar Chaurasia, learned counsel for the applicant and Sri U.D. Shukla, learned A.G.A. for the State.

2. The instant application has been filed seeking quashing of the order dated 08-09-2022 passed by learned Additional District & Sessions Judge, Court No.1, Ballia in Criminal Revision No. 14 of 2020 (Sonu Prasad Gupta Vs. State of U.P. and others), arising out of order dated 27-10-2019 passed by Chief Judicial Magistrate, Ballia, whereby the learned Additional District & Sessions Judge has rejected the criminal revision filed by the applicant against the order dated 27-10-2019 passed by Chief Judicial Magistrate, Ballia in Case No. 385 of 2015 (Sonu Gupta Vs. Laxman Gupta), under Sections 323, 427 IPC, pending in the court of Chief Judicial Magistrate, Ballia.

3. It is alleged that on 10-02-2015 a team of City Magistrate came without any prior notice and while leading the encroachment removal mission, they started removing the shop and house of the applicant herein and on being protested the police authorities and other officials and employees of Nagar Palika assaulted the applicant herein. Learned counsel for the applicant further submitted that the applicant and the other family members were seriously injured in the scuffle and the team has assaulted them and has taken away three generators, 20 Bhagaunas and a shop counter, therefore, the same was reported to the police, however no report was registered, thereafter, on 20-03-2015, the applicant has filed an application under Section 156(3) Cr.P.C.. On 26-03-2015 the learned Magistrate directed for registration of the F.I.R.. Subsequently, the police after investigation of the case submitted the final report in the case, which were protested by the applicant herein, therefore, vide order dated 18-01-2017 the learned Magistrate directed the investigation of the case by some other Sub Inspector. It has further been submitted that again a final report was submitted by the police, which was protested by the applicant

herein by filing an application on 07-06-2017. The said protest petition was converted into a complaint on behalf of the applicant and after recording the statements under Sections 200 and 202 Cr.P.C. the learned Magistrate vide order dated 27-10-2019 summoned the accused Laxman Gupta for the offences under Sections 323 and 427 IPC. The aforesaid order dated 27-10-2019 was challenged by the applicant herein by filing the Criminal Revision No. 14 of 2020, which has been dismissed vide order dated 08-09-2022 by the learned Additional Sessions Judge against which the instant application has been filed. Learned counsel for the applicant submits that since the Chief Judicial Magistrate, Ballia vide order dated 26-03-2015 has prima found the offence of a cognizable nature against the accused persons, therefore, he has directed for registration of the F.I.R. in the matter and on the same facts which were duly supported by the statements of witnesses under Sections 200 and 202 Cr.P.C., the learned Magistrate has summoned only Laxman Gupta and has exonerated the other officials of the Nagar Palika, the opposite party nos.2 to 4 herein, who have actively played role as per the direction of the said Laxman Gupta due to his personal enmity with the applicant herein.

4. Learned counsel for the applicant further submits that the offence as alleged against the opposite party nos. 2 to 4 is that despite the stay order 20-07-2010 shown by the applicant herein to the officials of the Nagar Palika, they torn away the said stay order and continues to proceed of removal of encroachment against the shop of the applicant herein, therefore, learned counsel for the applicant submits that opposite party nos.2 to 4 have actively played a role and has violated the court's order and had proceeded against the shop of the applicant in a malafide manner, therefore, they were also required to be summoned.

5. Per contra, learned A.G.A. for the State submits that the said shop was leased out to the applicant herein and the applicant has encroached upon the adjoining area outside the shop by keeping the generators and counters etc. which were due encroachment of the public land, which was not allotted to the applicant, therefore, the authorities have acted in accordance with law by removing the encroachment over the public land, which has no consequence with the shop in question allotted to the applicant, therefore, no offence against the opposite party nos.2 to 4 is made out from the entire allegations made in the complaint against the opposite party nos.2 to 4, who were performing their official duties.

6. Having heard the rival submissions made by the learned counsel

for the parties, this Court has carefully perused the record of the case and from the perusal of the order it is apparent that the applicant has encroached upon the adjoining area outside the shop by keeping the generators and counters etc. which were due encroachment of the public land, which was not allotted to the applicant, therefore, the authorities have acted in accordance with law by removing the encroachment over the public land, which has no consequence with the shop in question allotted to the applicant. It is not apparent even to this Court in which case and in whose favour the stay order dated 20-07-2010 has been passed, therefore, if the authorities have ignored the said order while proceeding with removal of encroachment, have not acted in violation of any apparent orders of the Court and it is nowhere the case of the applicant that the authorities have dispossessed the applicant from the shop in question which is allotted to him. Therefore, if any case the action taken for removal of the encroachment by the authorities concerned cannot be said to be an any violation of any orders of the court. They have acted within their powers by removing the encroachments, which was encroached by the applicant herein on the public land.

7. In view thereof, the instant application is devoid of merits and is hereby **dismissed**.

Order Date :- 8.11.2023

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