

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 9235 of 2023

Petitioner :- Moin Khan

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Vijai Kumar Tiwari

Counsel for Respondent :- G.A.

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Ms. Nandini Pandey, Advocate holding brief for Sri Vijai Kumar Tiwari, learned counsel for the petitioner and Sri L.D. Rajbhar, learned AGA for the State.

2. This petition under Article 227 of the Constitution has been filed posing a challenge to an order dated 12.01.2022 passed by the Chief Judicial Magistrate, Bareilly in Misc. Case No. 1387 of 2020 (Moin Khan vs. D.C. Sharma and others) and order dated 17.04.2023 passed by the Special Judge, Prevention of Corruption (U.P.S.I.B.)/Additional District Judge, Court No. 6, Bareilly in Criminal Revision No. 75 of 2022 (Moin Khan vs. State of U.P. and others).

3. The contentions of the petitioner are that the petitioner moved an application to the D.G.P., D.G. (Vigilance), S.S.P., Bareilly etc in the year 2020, regarding his false implication in FIR case crime no. 0567 of 2018 and that he moved an application under section 156(3) Cr.P.C. against the respondent nos. 2 to 6, with the allegation that he has been falsely implicated in the above noted case crime no. 0567 of 2018 and that a chargesheet has been submitted under section 67 of I.T. Act and under section 506 IPC, without a fair investigation. The real facts are that the In-charge, Cyber Crime Cell actually found that mail id was in the name of one Shivania Rai; in the investigation his mobile number was not found connected with Shivania Rai's facebook account. The opposite parties namely, (i) D.C. Sharma, In-charge, PS-Qila, Bareilly, (ii) In-charge, Cyber Crime Cell, (iii) Sheeba Ara Khan, (iv) Tasmin Ara Khan and (v) Javed Khan colluded with each other and filed a chargesheet against him on 03.06.2019, without doing proper and fair investigation. Further allegation is that this has been done by the respondents to harass him and to harm his social and economic status and that he had to face legal proceedings for obtaining bail etc.

4. I perused the material on record and the impugned orders. The learned trial court heard on applicant's application under section 156(3) Cr.P.C. and took a view that whatever the grievances of the applicant are, they may be taken up at appropriate stages of the proceedings arising out of case crime no. 0567 of 2018, therefore, it will not be appropriate to register a separate case on such a story. The learned revisional court took the same view. Learned revisional court besides observing several things, also observed that the petitioner had already filed a misc. case under section 340 Cr.P.C. against the respondents and that the criminal case under section 67 of I.T. Act and under section 506 IPC is pending against him. The revisionist has a defence to offer which can

be raised by him at appropriate stage in the criminal proceedings itself pending against him.

5. The essence of the petitioner's story as is revealed from the application under section 156(3) Cr.P.C. is that investigation was unfair and that chargesheet was filed by In-charge, PS-Qila, Bareilly and In-charge, Cyber Crime Cell, Bareilly in collusion with others to implicate him falsely and that a false case has been prepared against him. This is a kind of defence, which can be taken by him and can be adjudicated upon on merits alone during the trial of the case he is admittedly facing. In my view, the trial court as well as the revisional court have given cogent observations for rejection of the application as well as the dismissal of the revision. Therefore, I do not find any good ground to interfere in the impugned orders, hence the petition is **dismissed**.

Order Date :- 15.12.2023

#Vikram/-