

Court No. - 80

Case :- CRIMINAL MISC. WRIT PETITION No. - 14336 of 2023

Petitioner :- Smt. Geeta Dhawan

Respondent :- State Of Uttar Pradesh And 2 Others

Counsel for Petitioner :- Arvind Kumar

Counsel for Respondent :- G.A.

Hon'ble Subhash Chandra Sharma,J.

Heard learned counsel for the petitioner as well as learned A.G.A. for State and perused the material on record.

The present writ petition under Article 226 of the Constitution of India has been moved with following prayers :-

I- Issue a writ, order or direction in the nature of Certiorari to quash the impugned orders dated 16.05.2023 passed by the learned Sessions Judge, Gautam Budh Nagar in Criminal Revision No.304 of 2022 (Smt. Geeta Dhawan and another vs. Smt. Bandana Khanna and another) and the impugned order dated 26.05.2022 passed by Chief Judicial Magistrate, Gautam Budh Nagar in application u/s 156(3) Cr.P.c. No.117 2022 (Geeta Dhawan vs. Bandana Khanna), Police Station Beta-2, District Gautam Buddh Nagar.

II- Issue a writ, order or direction in the nature of Mandamus directing the learned Courts below/the concerned Magistrate to pass an order afresh on the application under Section 156(3) Cr.P.C. for registration of case/F.I.R. and investigate the same.

It is submitted that in this case an application u/s 156(3) Cr.P.C. was filed before the learned Magistrate which was treated as complaint against which criminal revision was filed before the learned court of Session but it was also dismissed without considering the facts and circumstances of the case. Further submitted that the facts as narrated in the application were likely to be investigated by the police but due to non-registration of police case, police was not capable of examining the facts. In case, case is registered and police makes investigation then all the facts relevant for the fair decision of the case will be before the learned court concerned but it is not possible in complaint case. Learned revisional court also did not consider these facts but passed the order against the facts and provisions of law, therefore, requested to quash the orders passed by the learned Magistrate as well as the learned Session Judge and to allow the present revision.

Learned A.G.A. opposed the prayer as aforesaid and contended that in this case all the facts and circumstances were in the knowledge of the petitioner/applicant

regarding which evidence may be brought by her before the learned court. There is no any issue related to some recovery to be made by the police only. In this way, the learned Magistrate has exercised its jurisdiction as vested in it by treating the application u/s 156(3) Cr.P.c. as complaint, and there appears no illegality. Learned court of Sessions also considered all the facts and circumstances of the case and relevant provisions regarding disposal of application u/s 156(3) Cr.P.C. and then dismissed the criminal revision. It is also contended that if there is requirement of investigation by the police the court has power u/s 202 Cr.P.C. to get the matter investigated by the police itself. There is no any illegality or impropriety in the orders passed by the learned courts below but this petition being devoid of merit is liable to be dismissed.

Considering the facts and circumstances of the case, submissions made by learned counsel for the petitioner as well as learned A.G.A., it appears that in this case dispute is regarding property left by mother of the petitioner and there appears no any such material as is required to be discovered by the police during the course of investigation. On the other hand the petitioner may bring the evidence before the learned court which is in her possession. The learned Court of C.J.M. has considered all the facts and circumstances of the case and the material on record then passed the order dated 26.05.2022 while treating the application u/s 156(3) Cr.P.C. as complaint and also mentioned in the order that if adequate ground be found on further proceedings then investigation u/s 202 Cr.P.C. would be ensured. In this way, the learned Magistrate has also let the option opened for investigation in pursuance to the provisions as contained u/s 202 Cr.P.C. The revisional court has also considered all these facts and circumstances of the case and dismissed the revision. Therefore, there appears no any illegality or impropriety in the orders passed by learned court of Magistrate as well as learned court of Session but this petition being devoid of merit is liable to be dismissed.

Accordingly, this writ petition is, hereby, ***dismissed***.

Order Date :- 18.10.2023

Ashok Gupta