

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 9571 of 2023

Petitioner :- Mahaveer Prasad Rawat

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

Counsel for Petitioner :- Surendra Kumar Tripathi

Counsel for Respondent :- G.A.,Rajesh Kumar Pandey

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Surendra Kumar Tripathi, learned counsel for the petitioner, Sri R. K. Pandey, learned counsel for respondents no.2 to 6 and Sri R.K.Gupta, learned A.G.A. for the State-respondents no.1 and 2.

2. This criminal misc. petition under Section 227 of the Constitution of India has been filed for quashing the impugned order dated 24.08.2023 passed by Additional Sessions Judge, court no.06, Mathura in Criminal Revision No.159 of 2021 (Mahaveer Prasad Rawat vs. State of U.P. and others) as well as order dated 19.07.2021 passed by Chief Judicial Magistrate, Mathura in Complaint Case No.2908 of 2018, under Sections 147, 217, 219, 380, 420, 427, 477A, 477, 201, 120B, 504 and 506 I.P.C., P.S. Mahawan, District Mathura.

3. Submission of the petitioner is that the petitioner lodged an F.I.R. on the basis of application moved under Section 156(3) Cr.P.C. with the allegation that the first informant Mahaveer Prasad Rawat, Advocate had filed a Civil Writ No.26415 of 2014 before the Allahabad High Court, in which an order was passed on 13.05.2014 for removing encroachment from plot no.69 area 177 ares. The first informant obeyed the orders of the court. Thereafter a R.T.I. application was filed on 13.08.2014, which was replied by Tehsildar on 04.10.2014 and he came to know from this reply that a case under Section 115 C, Case no.347 of 2014 is pending in the court of Tehsildar, Mahawan. Opposite party started construction, therefore, he moved an application in the court of Tehsildar for staying the new construction and also moved an application under the R.T.I. to obtain information regarding the action taken. He was not given any information and was directed to apply for information as per Rules. He moved another application for obtaining the copy of the ordersheet but he came to know that no such proceeding was pending in the court concerned.

4. After investigation the I.O. filed a final report. The first informant protested against final report by moving application on 11.07.2018. This protest petition was treated as complaint. Statements of the complainant and witnesses were recorded under Section 200 Cr.P.C. and 202 Cr.P.C.. The informant/complainant was heard and the learned Magistrate passed an order on 19.07.2021 dismissing the complaint under Section 203 Cr.P.C.. The complainant preferred Criminal Revision no.159 of 2021. Both the sides were heard and a detailed order was passed by Additional Sessions Judge, Mathura

on 24.08.2023 dismissing revision and affirming the orders passed by the trial court.

5. The submissions of the petitioner in nutshell is that there was sufficient evidence for summoning the accused persons. However, ignoring the evidence on record learned trial court declined to summon the accused persons and passed the order in arbitrary manner. The revisional court without appreciating the evidence on record and the points raised by him in revision affirmed the order passed by the trial court.

6. Respondent no.4 has, on the other hand, contended that the allegation is confined to the fact that the file of revenue case no.347 of 2013-14 was not found and went missing and that he was given wrong information by the revenue officer/officials. The only allegation is that no action was taken by the revenue authorities on his complaint and that they are colluding with private respondents no.4, 5 and 6. Further my attention has been drawn to the fact that Tehsildar and Lekhpal have been arrayed as respondents no.2 and 3.

7. My attention has been drawn to para 6 of the impugned order dated 19.07.2021 passed by trial court which is as below:-

"जहा तक वाद सं० 347/14 उपरोक्त की पत्रावली विपक्षीण द्वारा कही छिपा देने व चोरी कर नष्ट किये जाने सम्बन्धी परिवादरी के अभिकथनो का प्रश्न है, उल्लेखनीय है कि पत्रावली पर तत्कालीन जिलाधिकारी मथुरा द्वारा राजस्व परिषद उ०प्र० को प्रेषित पत्रांक सं० 57/पन्द्रह बी०शि०लि०/2016 दिनांकित 14.07.2016 की प्रति उपलब्ध है जिसमें वाद सं० 347/13-14 की पश्चातवर्ती वाद सं० 278/14-15 पाया गया है तथा परिवादी की शिकायत परीक्षणोपरांत निराधार पायी गयी है। यद्यपि परिवादी का कथन है कि वाद सं० 278/14-15 व वाद सं० 347/13-14 भिन्न पत्रावलिया है, परन्तु इस सम्बन्ध में कोई ठोस साक्ष्य पत्रावली पर प्रस्तुत नहीं किया गया है। यहा यह भी उल्लेखनीय है कि प्रश्नगत पत्रावली वाद सं० 347/13-14 के गुम होने के सम्बन्ध में विधिक कार्यवाही का अनन्य अधिकार सम्बन्धित राजस्व प्राधिकारियों को है, जबकि उनकी ओर से वाद सं० 347/13-14 को गुम होना न पाते हुए उसका पश्चातवर्ती वाद सं० 278/14-15 कथित किया है। ऐसे में प्रश्नगत पत्रावली वाद सं० 347/14 के गुम होने के सम्बन्ध में किये गये परिवादी के अभिकथन बलहीन प्रतीत होते हैं।"

8. On submissions of both sides, it appears that the subject matter of dispute is non availability of the file of Case No.347 of 2014. The matter was taken up by the department and the Revenue Board, by its letter dated 14.07.2016 dealt with the complaint of the petitioner. It was found that file was very much available with a new No.278/18/15 and actually never went missing. In my view, the allegations as contained in the protest application had no substance and were rather absurd and that the trial court rightly dismissed the complaint under Section 203 Cr.P.C. The revisional court did not find any ground to disturb the order dated 19.07.2021.

9. In my opinion, the petition is without any substance and is, therefore, **dismissed.**

Order Date :- 7.11.2023

Asha