

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 15666 of 2023

Petitioner :- Shri Sharmanand Tyagi

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Jitendra Rana,Arbind Kumar Yadav

Counsel for Respondent :- G.A.,Jai Bahadur Singh

Hon'ble Vivek Kumar Birla,J.

Hon'ble Vinod Diwakar,J.

1. Instructions filed by learned counsel appearing for the informant is taken on record.

2. Heard Sri Jitendra Rana, learned counsel for the petitioner, Sri Jai Bahadur Singh, learned counsel appearing for the informant and learned A.G.A. appearing for the State respondents.

3. The relief sought in this petition is for quashing of the F.I.R. dated 1.9.2023 registered as Case Crime No. 252 of 2023 under Sections 420 IPC, Police Station Kutubshaer, District Saharanpur. Further prayer has been made not to arrest the petitioner in the aforesaid case.

4. On 13.10.2023 following order was passed:-

"1. Heard Sri Jitendra Rana, learned counsel for the petitioner and Sri Ratan Singh, learned AGA for the State.

2. This writ petition has filed for quashing the impugned First Information Report dated 1.9.2023 in Case Crime No. 252 of 2023, under Sections 420 IPC, Police Station Kutubshaer, District Saharanpur. It is further prayed that the respondents may be directed not to arrest the petitioner in pursuance to the FIR dated 1.9.2023.

3. From the perusal of the FIR, we find that vague words have been used against the Engineers/officials of the department that without verifying the alleged forged bill submitted by the petitioner without doing any work assigned to the petitioner, they have passed the bills.

4. It is shocking to note that prima facie such Engineers/officials have been found guilty of certifying the alleged forged bills, however, no action has been proposed or taken against them.

5. Learned AGA may seek specific instructions in this regard from Additional Municipal Commissioner, Bagar Nigam, District Saharanpur (Respondent no. 4). He shall also forward a copy of this order to the District Magistrate, Saharanpur to look into the matter and send his instructions as well.

6. Put up this case as fresh on 31.10.2023.

7. Learned counsel for the petitioner is also directed to serve a copy of the Panel Lawyers of Nagar Nigam, Saharanpur alongwith this order so that he may also inform this Court about the action, if any, taken against such Engineers/official mentioned in the FIR.

8. Copy of the panel lawyers of Nagar Nigam, Saharanpur may be served within two days."

5. Submission of learned counsel for the petitioner is that the present criminal prosecution has been lodged against the petitioner with mala fide intention. It is next submitted that after having received the notice the petitioner has deposited the amount of 50% of the total amount on 28.8.2023, therefore, it is very much clear that Section 420 IPC is not made out against the petitioner.

6. Per contra, learned counsel appearing for the informant has produced copy of the letter dated 2.9.2023 before this Court and on the basis of instructions submits that disciplinary proceedings have been initiated against Danish Haidar Naqvi, Alok Srivastava and Anoop Singh for misconduct / misuse of their powers. By drawing attention to letter dated 16.10.2023 it is pointed out that the proceedings have also also been initiated against Prashant Kumar. It is next submitted that the petitioner is a firm, who by filing forged documents had received the amount even without doing any work and, therefore, committed a fraud. It is also pointed out that admittedly the petitioner has deposited 50% of the total amount of Rs. 48,91,559/-. Submission, therefore, is that from perusal of the record a cognizable offence is made out.

7. Learned AGA opposed the prayer for quashing of the FIR, which discloses cognizable offence.

8. Perusal of the impugned first information report prima facie reveals commission of cognizable offence. Therefore, in view of the law laid down by Hon'ble Supreme Court in the case of **State of Haryana and others vs. Bhajan Lal and others, 1992 Supp. (1) SCC 335 and M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra, AIR 2021 SC 1918 and in Special Leave to Appeal (Crl.) No.3262/2021 (Leelavati Devi @ Leelawati & another vs. the State of Uttar Pradesh)** decided on 07.10.2021, no case has been made out for interference with the impugned first information report.

9. Therefore, the writ petition is dismissed.

Order Date :- 28.11.2023

Lalit Shukla