

Court No. - 91

Case :- APPLICATION U/S 482 No. - 37281 of 2023

Applicant :- Praveen Kumar Saxena

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Narendra Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar,J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.
2. The present application under Section 482 Cr.P.C. filed by the applicant with the prayer to quash the order dated 18.07.2023 passed by the learned Chief Judicial Magistrate, Mainpuri in Case Crime No. 172 of 2023 under Sections 307, 376, 511, 395, 504 I.P.C. and under Section 3/4 of the POCSO Act, P.S. Kotwali, District Mainpuri.
3. Learned counsel for the applicant has submitted that the applicant lodged an F.I.R. bearing Case Crime No.172 of 2023 under Sections 307, 376, 511, 395, 504 I.P.C. and under Section 3/4 of the POCSO Act. It is further submitted that during the course of investigation, an application was moved by the applicant before the Chief Judicial Magistrate, Mainpuri for recording the statement under Section 164 Cr.P.C. of the prosecutrix on which, a report was called from the Investigating Officer, in which, it was disclosed that offences under Section 376, 511, 395 I.P.C. and 3/4 POCSO Act have been deleted and there is no necessity of recording statement under Section 164 Cr.P.C. Further submission is that considering the aforesaid report the Chief Judicial Magistrate, Mainpuri dismissed the application moved by the applicant vide order dated 18.07.2023 being dissatisfied and aggrieved by the aforesaid order this application under Section 482 Cr.P.C. has been filed. The main submission of learned counsel for the applicant is that I.O. without recording the statement of prosecutrix under Section 164 Cr.P.C., the important and relevant sections have been deleted which shows that the

investigation is being conducted in a most perfunctory manner and learned Chief Judicial Magistrate has not considered this aspect of the matter and dismissed the application filed by the first informant for the recording of the statement of the prosecutrix under Section 164 Cr.P.C.

4. On the other hand, learned A.G.A. has opposed the prayer made by the learned counsel for the applicant and contended that investigation is still pending and no charge sheet has been filed in this case, at the stage of investigation, there can be no interference on the part of the court at the instance of the first informant and the application under Section 482 Cr.P.C. is not maintainable as such. It is further contended that the applicant has an alternative remedy before the Division Bench by invoking extraordinary jurisdiction under article 226 of the Constitution of India.

5. Keeping in view the submission made by the learned counsel for the parties and from perusal of record, it is apparent that investigation is still continuing and no charge sheet has yet been filed by the investigating officer. The application for recording the statement of the prosecutrix under Section 164 Cr.P.C. has been moved at the instance of the first informant not by the investigating officer, which has been rightly dismissed by the learned Chief Judicial Magistrate, Mainpuri. No ground for interference by invoking the inherent power under Section 482 Cr.P.C. is made out.

6. With the aforesaid observations, the present application u/s 482 Cr.P.C. is ***disposed off*** accordingly.

Order Date :- 28.10.2023

Gaurav