

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 16389 of 2023

Petitioner :- Chhotu Pandey And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Anil Kumar Mishra

Counsel for Respondent :- G.A.

Hon'ble Vivek Kumar Birla,J.

Hon'ble Vinod Diwakar,J.

1. Heard Shri Anil Kumar Mishra, learned counsel for the petitioners as well as Shri D. P. Singh, learned A.G.A. for the State respondents.

2. The present writ petition has been preferred with the prayer to quash the impugned First Information Report dated 24.09.2023 registered as Case Crime No.0495 of 2023, under Section 323 IPC & Sections 3(1)(Da) & 3(1)(Gha) of the SC/ST (Prevention of Atrocities) Act, 1989, (Amendment 2015), P.S. Naubasta, District Dakshani Commissionerate, Kanpur Nagar, and for a direction to the respondent no.2 to not arrest the petitioners in pursuance of impugned First Information Report.

3. Vide order dated 17.10.2023, notices were issued to the informant.

4. Office report dated 20.11.2023 reflects that notices were issued to respondent no.3 through RPAD fixing 02.11.2023, but neither acknowledgement nor undelivered cover has been received back.

5. In such view of the matter, we proceed to consider the matter on merits.

6. The submission of learned counsel for the petitioners is that all alleged offences are punishable with imprisonment upto seven years, therefore the police authorities are bound to follow the procedure laid down under Section 41-A Cr.P.C. The petitioners have been wrongly implicated and could not be arrested. Reliance has been placed on the judgement of Apex Court in **Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273** and **Social Action Forum for Manav Adhikar Vs. Union of India, Ministry of**

Law and Justice and others in Writ Petition (Civil) No. 73 of 2015 with Criminal Appeal No. 1265 of 2017 Writ Petition (Criminal) No. 156 of 2017 and in Satendra Kumar Antil vs. Central Bureau of Investigation and Another (2022) 10 SCC 51 and co-ordinate Division Bench of this Court in Vimal Kumar & 3 others Vs. State of U.P. & 3 others in 2021 (2) ACR 1147.

7. We have gone through the impugned first information report and we are of the opinion that the guidelines framed by the Apex Court in the above noted judgement are equally applicable to the facts of the instant case.

8. Accordingly, the instant petition also stands **disposed of** in terms of the judgements as noted above.

Order Date :- 14.12.2023

Zafar