

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 16664 of 2023

Petitioner :- Hemant Banswal And Another

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

Counsel for Petitioner :- Pratik Chandra

Counsel for Respondent :- G.A.

Hon'ble Vivek Kumar Birla,J.

Hon'ble Vinod Diwakar,J.

1. Heard Ms. Asha Parihar, holding brief of Shri Pratik Chandra, learned counsel for the petitioners, Shri G.P. Singh, learned A.G.A for the State-respondents, and perused the record.

2. The relief sought in this petition is for quashing of the impugned First Information Report dated 8.9.2023, registered as Case Crime No.0405 of 2023, under Sections 395, 452, 504, 506 IPC, Police Station- Phase-II, District Gautam Budh Nagar. Further prayer has been made not to arrest the petitioners in the aforesaid case.

3. Submission of learned counsel for the petitioner is that a dispute of civil nature is being given color of criminal prosecution to harass the petitioner. It is next submitted that the present criminal prosecution is nothing but a counterblast to the FIR lodged by the petitioner no.2- Karan Yadav registered as Case Crime No.495 of 2022 dated 19.11.2022 and other criminal prosecutions are also pending. It was also submitted that arbitration is also pending between the parties, and therefore, purely commercial dispute is being given color of criminal prosecution, as such the impugned FIR is liable to be quashed.

4. *Per contra*, learned A.G.A. by pointing out that in the FIR there is a reference to the incident dated 22.4.2022 that the same has been recorded in CCTV camera in reference to the offence under section 395 IPC, submits that as per instructions, the CCTV footage is available during the investigation. It was also pointed out that the criminal prosecution lodged by the petitioner in Case Crime No.0495 of 2022, a final report has already been submitted, and therefore, a cognizable offence of serious nature is being made out.

5. *Prima-facie*, on plain reading of the contents of the impugned FIR, we find that there is no denial in the entire petition that this incident has not taken place or there is no CCTV footage of this incident or false evidence is being created to lodge the FIR.

6. In such view of the matter, we find that pendency of civil dispute between the parties has no relevance in the present case, therefore, the arguments being raised by learned counsel for the petitioners is nothing but a defence of the petitioners that cannot be considered for the purpose of quashing of the impugned FIR. The petitioners has also failed to bring their case within the parameters of *State of Haryana and others Vs. Bhajan Lal and others, 1992 Supp. (1) SCC 335*. Therefore, the extraordinary power vests with this Court cannot be invoked in the facts-circumstances of the case.

7. The writ petition is devoid of merits, and is accordingly, **dismissed**.

Order Date :- 21.11.2023

Anil K. Sharma