

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 10591 of 2022

Petitioner :- Neeraj Dubey

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

Counsel for Petitioner :- Pankaj Dubey

Counsel for Respondent :- G.A., Basu Dev, Shailesh Narayan Upadhyay

Hon'ble Mrs. Jyotsna Sharma, J.

1. Case called out. None present for the petitioner. Sri Basu Dev, learned counsel for respondent nos.2 and 3 and Sri S.K. Mishra, learned A.G.A. for the State are present.

2. This petition has been filed under Article 227 challenging an order dated 16.7.2022, passed by A.C.J.M. Court No. 10, Allahabad by which the application moved under section 156 (3) Cr.P.C. by the petitioner Neeraj Dubey, was dismissed as well as the order dated 26.09.2022, passed in Criminal Revision No. 353 of 2022 preferred by the petitioner whereby order of the trial court was affirmed and the revision was dismissed.

3. It is submitted by respondents that there has been a dispute relating to partition of property and that no offence was found to have been made out on the basis of the application moved by petitioner Neeraj Dubey. The revisional court dismissed the revision agreeing with the view taken by the trial court. It is further submitted that no judicial court is expected to exercise his judicial powers in a mechanical manner and that when the court has applied his judicial discretion, same cannot be disregarded in exercise of powers under Article 227.

4. Settled law is that, in a proceeding under Article 227, the court is not expected to go into and reappraise the evidence unless there is some glaring error of fact or law leading to miscarriage of justice. The scope of interference in exercise of supervisory jurisdiction on decision on fact is limited.

5. In the instant case, the learned trial court found that the dispute essentially related to property and that there was no substance in the submissions as disclosed from the application moved under section 156 (3) Cr.P.C. In my opinion, in case, the court, by application of judicial mind, finds inherent weaknesses in the story as setup in the application moved under 156 (3) Cr.P.C., it is perfectly within its right to dismiss the same. It cannot be said that once the application under section 156 (3) Cr.P.C. is moved, the Magistrate has no option but to order for registration of F.I.R. and investigation thereon. The process of law cannot be allowed to become a tool in the hands of the unscrupulous litigant.

6. I do not find any good ground to interfere in the impugned orders. The petition lacks merit and is therefore **dismissed**.

Order Date :- 3.11.2023

Sumit Kumar