

Court No. - 87

Case :- APPLICATION U/S 482 No. - 40065 of 2023

Applicant :- Shivpujan

Opposite Party :- State Of U.P.And 2 Others

Counsel for Applicant :- Adarsh Shukla

Counsel for Opposite Party :- G.A.,Ashwani Kumar
Mishra,Vivek Srivastava

Hon'ble Neeraj Tiwari,J.

1. Heard learned counsel for the applicant, learned A.G.A. and learned counsel for the opposite party No.2.

2. The present 482 Cr.P.C. application has been filed to quash the order dated 03.05.2023 passed by the Additional Session Judge/Special Judge (POCSO Act), Basti in Criminal Misc. Application No.113 of 2023 (Shivpujan vs. Aditya Kumar and others), under Section 156 (3) Cr.P.C., Police Station Purani Basti, District-Basti.

3. Learned counsel for the applicant submits that applicant has filed an application under Section 156 (3) Cr.P.C. for lodging of FIR against the opposite party No.2 with the allegation of kidnapping and rape, but instead of lodging FIR, complaint case has been registered by the court below. He next submits that in the light of the judgement of the Apex Court in the case of **Lalita Kumari Vs. Government of U.P. and others** reported in **2014 (2) SCC 1**, once there is a cognizable offence, it is required to the Magistrate to issue direction for lodging of the FIR, therefore, impugned is bad and liable to be set aside.

4. Learned A.G.A. could not dispute the aforesaid facts.

5. I have considered the rival submissions made by the learned counsel for the parties and perused the record. From perusal of the impugned order, it is apparently clear that no sufficient reason has been disclosed on the basis of which the Magistrate has directed to registered complaint case instead of issuing direction for lodging FIR.

6. The order dated 03.05.2023 passed by the Additional Session Judge/Special Judge (POCSO Act), Basti in Criminal Misc.

Application No.113 of 2023 (Shivpujan vs. Aditya Kumar and others), under Section 156 (3) Cr.P.C., Police Station Purani Basti, District-Basti is hereby quashed. The matter is remanded back to the court concerned to decide afresh within four weeks from the date of production of a certified copy of this order and pass appropriate order in accordance with law keeping in view the observations made by this court as well as direction contained in the judgment of the Apex Court in the case of **Lalita Kumari (supra)**.

7. With the aforesaid directions, the present application is **allowed**.

Order Date :- 28.11.2023

Amit/-