

Court No. - 45

Case :- CRIMINAL MISC. WRIT PETITION No. - 16800 of 2023

Petitioner :- Girjashankar Alias Gopal And 2 Others

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

Counsel for Petitioner :- Ghan Shyam

Counsel for Respondent :- G.A.,Jitendra Kumar Shukla

Hon'ble Vivek Kumar Birla,J.

Hon'ble Vinod Diwakar,J.

1. Heard Sri Ghan Shyam, learned counsel for the petitioners, Sri Jitendra Kumar Shukla, learned counsel for the informant and Sri Rajesh Kumar Madhesia, Learned State Law Officer.

2. By means of present petition the petitioners the petitioners are seeking quashing of the impugned FIR dated 27.08.2023, registered at Case Crime No. 116 of 2023, under Sections 452, 376, 313, 506, 323, 427 IPC, Police Station Madihan, District Mirzapur. Further prayer has been made not to arrest the petitioner pursuant to said FIR.

3. Submission of learned counsel for the petitioners is that it is because of the civil litigation pending between the parties filed by petitioner no.3 Devendra Tripathi against the informant herein Smt. Nitu Kumari @ Nitu Maurya and another for declaring the sale deed dated 04.06.2020 as null and void, the criminal prosecution case has been lodged with false allegations. Petitioner no.3 is an old person aged about 70 years and petitioner nos. 1 and 2 are his sons and no such offence as alleged has been made out. The present criminal prosecution has been lodged by filing application under section 156 (3) Cr.P.C. after a delay of about nine days from the date of incident. As such, the same does not inspire any confidence as it is a case of malicious prosecution.

4. *Per contra*, learned counsel for the informant opposed the prayer and submits that it is because of the injury caused by the accused persons that the informant suffered miscarriage and even after the recovery when FIR was not lodged, the present criminal prosecution has been filed after nine days and so far as the civil litigation is concerned, the incident has taken place so that the informant may succumb to the pressure of the accused side.

5. Learned AGA opposed the prayer and submits that cognizable offence is made out.

6. Perusal of the impugned first information report prima facie reveals commission of cognizable offence. Therefore, in view of the law laid down by Hon'ble Supreme Court in the case of **State of Haryana and others vs. Bhajan Lal and others, 1992 Supp. (1) SCC 335** and **M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra, AIR 2021 SC 1918** and in **Special Leave to Appeal (Crl.) No.3262/2021 (Leelavati Devi @ Leelawati & another vs. the State of Uttar Pradesh)** decided on 07.10.2021, no case has been made out for interference with the impugned first information report.

7. The writ petition is devoid of merit and is accordingly dismissed.

Order Date :- 9.11.2023

Madhurima