

Court No. - 53

Case :- MATTERS UNDER ARTICLE 227 No. - 11022 of 2023

Petitioner :- Smt Kalawati

Respondent :- State Of U.P. And 8 Others

Counsel for Petitioner :- Pradyumna Kumar Yadav

Counsel for Respondent :- G.A.

Hon'ble Syed Aftab Husain Rizvi,J.

1. Heard learned counsel for the petitioner, learned A.G.A. for the State and perused the record.

2. This petition under Article 227 of the Constitution of India has been filed against judgement and order dated 27.09.2023 passed by Additional Sessions Judge, Court No.11, Aligarh in Criminal Revision No.296 of 2022 and order dated 04.08.2022 passed by Judicial Magistrate, Court No.2, Aligarh in Complaint Case No.814 of 2021, Smt. Kalwati Vs. Raj Pal and others, Police Station Barla, District Aligarh.

3. The petitioner moved an application, under Section 156(3) Cr.P.C. before the Judicial Magistrate alleging therein that two incidents, one dated 03.04.2021 and the other dated 08.04.2021 making allegations that opposite party nos. 2 to 9 due to property dispute has assaulted, abused, torn clothes of the complainant and extended death threat to her. This application was treated as a complaint. After enquiry, under Sections 200 and 202, Cr.P.C., the learned Magistrate by the impugned order dated 24.08.2022 has dismissed the complaint under Section 203 Cr.P.C. Aggrieved with it, the petitioner filed a criminal revision, which has also been dismissed by the other impugned order dated 27.09.2023.

4. The learned counsel for the petitioner has submitted that there are specific allegations of assault, abuse, criminal intimidation and indecent act. The complainant has supported the allegations of the complaint with her statement under Section 200 Cr.P.C. She has also produced two witnesses under Section 202 Cr.P.C. and they have also supported the allegations of the complaint. Ignoring the evidence on record, the learned Magistrate only on the ground that the civil dispute is pending between the parties has dismissed the complaint. It is further submitted that the civil dispute is the genesis of occurrence while the actual occurrence is criminal in nature. The learned Magistrate has failed to appreciate it and has

committed manifest error in dismissing the complaint under Section 203 Cr.P.C. The learned revisional Court has also failed to appreciate the factual and legal position and dismissed the revision. Both the orders are arbitrary and illegal.

5. In the complaint filed by the petitioner, eight persons including three females have been arrayed as accused and allegations have been made against them that they with other accused have assaulted the complainant and committed other criminal acts. With regard to the incident dated 08.04.2021, there are allegations that the accused, who are 8 in numbers assaulted the complainant with lathi and danda. No medical report has been filed to substantiate this allegation. It is admitted that the dispute of civil nature is pending between the parties.

6. The learned Magistrate has elaborately discussed all the facts, evidence and material on record and has come to the conclusion that there is no sufficient ground to proceed and no *prima facie* offence is made out and dismissed the complaint.

7. It appears that the application/ complaint has been filed just to pressurize the opposite party in respect of civil dispute. Taking cognizance and summoning eight persons including three female, in such a case, will amount to an abuse of the process of the Court. So the impugned order is just and proper and there is no illegality in the impugned order passed by the learned Magistrate as well as by the learned revisional Court.

8. The petition under Article 227 is hereby, dismissed.

Order Date :- 24.11.2023

RKM