

Court No. - 67

Case :- CRIMINAL MISC. WRIT PETITION No. - 17053 of 2023

Petitioner :- Bhanu Prakash Bajpayee And 8 Others

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Ram Kumar Pal

Counsel for Respondent :- G.A., Shikhar Awasthi

Hon'ble Rahul Chaturvedi, J.

Hon'ble Anish Kumar Gupta, J.

Heard Sri Ram Kumar Pal, learned counsel for the petitioners and Sri Shikhar Awasthi, learned counsel for the respondent and learned A.G.A. for the State.

By means of the present petition, the prayer sought is to issue a writ of certiorari quashing the impugned order dated 28.10.2023, passed by Joint Police Commissioner, Law and Order, Kanpur Nagar (respondent no.3), in which he has directed to the Deputy Commissioner, South, District- Kanpur Nagar, respondent no.5 to further investigate in Case Crime No. 218 of 2022 u/S 147, 420, 467, 468, 471 and 506 I.P.C, P.S.- Juhi, District- Dakshini (Commissionerate, Kanpur Nagar).

Contentions read by the counsel that the F.I.R. was registered way back on 18.11.2022 u/S 147, 420, 467, 468, 471 and 506 I.P.C., P.S.- Juhi, District- Dakshini (Commissionerate, Kanpur Nagar), against the nine accused persons and the police, after holding thorough and professional investigation has submitted a final/closure report in the Court. The reference of this fact finds place at page '100' of the petition, in which it has been written as under:

"01.03.2023

आज अंतिम पत्र विवेचक द्वारा अपराध संख्या 218 / 22 धारा 147, 420, 467, 468, 471, 506, 384 आई०पी०सी० थाना जूही, से प्राप्त हुआ। अंतिम पत्र, केस डायरी एवं अन्य पुलिस प्रपत्रों का अवलोकन किया। आदेश हुआ कि प्रकीर्ण वाद के रूप में दर्ज रजिस्टर हो। वादी जरिये नोटिस दिनांक 28.03.23 को पेश हो।"

Thereafter, it is contended by learned A.G.A. that the concerned Magistrate, Kanpur Nagar, is seized with the matter. The final report which is filed before concern Magistrate is for his consideration.

Concern Magistrate, is now a "custodia legis" of the case. Now, any order passed by the Magistrate could be challenged by invoking the extraordinary powers of this Court. We have perused the only order challenged on 28.02.2023, by which the Joint Commissioner, Kanpur Nagar, has directed to carry out further investigation u/S 173(8) Cr.P.C., We are of the considered opinion that this order cannot be challenged u/S Article 226 of the Constitution of India but under appropriate sections of Cr.P.C. as the learned Magistrate would have final say in the matter.

Accordingly, the present petition stands disposed of.

Order Date :- 6.11.2023

Shubham Arya