

Court No. - 43

Case :- CRIMINAL MISC. WRIT PETITION No. - 17054 of 2023

Petitioner :- Arun Prakash Chaubey

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

Counsel for Petitioner :- Nitin Sharma, Anil Kumar Pandey

Counsel for Respondent :- G.A.

Hon'ble Anjani Kumar Mishra, J.

Hon'ble Vivek Kumar Singh, J.

1. Heard Shri Nitin Sharma, learned counsel for the petitioner and learned A.G.A. for the State.
2. The instant writ petition seeks quashing of the FIR dated 20.05.2021 giving rise to Case Crime No.2 of 2021, under Sections 409, 120-B I.P.C. and 7, 13(1)(a), 13(2) Prevention of Corruption Act, 1988, Police Station- Gorakhpur Sector (Vigilance Establishment), District- Gorakhpur.
3. The contention of the learned counsel for the petitioner is that the petitioner is a retired Assistant Regional Transport Officer. The FIR alleges collusion between the petitioner and co-accused for cancellation of the hypothecation endorsement, which was made at the time of registration of a JCB UP-51-AT-5709. The FIR also alleges that the FIR has been lodged consequent to directions issued by the High Court for holding an inquiry regarding the disappearance of the registration file pertaining to the said JCB.
4. During inquiry it was discovered that the application of the owner of the vehicle for cancellation of the hypothecation endorsement was filed on 10.08.2018, whereupon the endorsement was removed by Vinod Kumar, Clerk and was duly approved by the petitioner. This endorsement had been removed with the connivance of Vinod Kumar, who was not authorized to do such kind of work. It should have been performed by one Kamla Prasad. The file was not found to have been deposited in the record room by Kamla Prasad, clerk and hence the FIR.
5. It is submitted that when the petitioner came to know of the discrepancy, the order cancelling the hypothecation was set

aside and an FIR was got lodged by the petitioner. The mistake was that of the junior staff and the petitioner has been falsely implicated by means of the impugned FIR.

6. It is lastly submitted that the entire proceedings started consequent to an order passed by the High Court, which has been set aside by the Apex Court vide order dated 05.01.2021 passed in Criminal Appeal No.6 of 2021.

7. Learned AGA has submitted that the FIR alleged to have been lodged at the instance of the petitioner is against the owner of the vehicle and not the staff subordinate to him.

8. Insofar as the contention of the learned counsel for the petitioner that the FIR had been lodged on the basis of an inquiry conducted consequent to orders passed by the High Court and that the entire proceedings have been set aside by the Supreme Court is an argument, this Court is unable to accept. The matter before the Apex Court was with regard to the release of the vehicle. The order of the Supreme Court does not and has not set aside any direction of the High Court for holding an inquiry nor has it dealt with this aspect of the matter.

9. Moreover, in our considered opinion, the allegations in the FIR constitute ingredients of a cognizable offence. The provisions of the Prevention of Corruption have also been invoked against the petitioner and in this regard it is admitted on record that the Governor has granted sanction of the prosecution of the petitioner.

10. Under the circumstances and since the allegations in the FIR contain the ingredients of a cognizable offence, the FIR cannot be quashed.

5. The writ petition is accordingly, ***dismissed***.

Order Date :- 6.11.2023

Mayank