

**Court No. - 91**

**Case :- APPLICATION U/S 482 No. - 41536 of 2023**

**Applicant :- Madhusudan Dutta**

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

**Counsel for Applicant :- Shashank Mishra**

**Counsel for Opposite Party :- G.A.**

**Hon'ble Gajendra Kumar,J.**

1. Heard learned counsel for the applicant and Sri M.C. Chaturvedi, learned Additional Advocate General assisted by learned AGA for the Opposite party nos.1 and 2 (State).

2. The instant Application 482 Cr.P.C. has been filed on behalf of the applicant challenging the order dated 27.10.2023 passed by the learned CJM, Jaunpur arising out of case crime No.220 of 2021, under Sections 420, 467, 468, 471, 474, 476, 323, 504, 506, 511, 120-B IPC, Police Station-Kotwali, District-Jaunpur, whereby the learned CJM has rejected the application filed by the applicant. Further, to file a report under Section 173 Cr.P.C. as early as possible or within a fixed time frame, which this Hon'ble Court deem fit and proper.

3. Learned counsel for the applicant submits that investigation is pending since last two years in the present case and no report under Section 173 Cr.P.C. has been filed till date, as such, the order dated 27.10.2023 passed by the learned CJM is wholly illegal, inasmuch as, the learned Magistrate is armed with all the powers as given to him under Section 156(3) Cr.P.C. to pass necessary orders, if he finds that anything being done by investigating officer is not proper. In this regard, he has placed reliance upon the judgment of Apex Court in the case of **Sakiri Vasu Vs. State of U.P.; (2008) 1 SCC (Cri) 440** wherein, the Hon'ble Apex Court in para Nos. 17 and 18 of the aforesaid judgment has observed as follows:-

*"17. In our opinion Section 156(3) Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) Cr.P.C., though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper*

investigation.

*18. It is well-settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution."*

4. In support of his submission he has placed reliance upon the judgment of Apex Court in the case of **Dilawar Vs. State of Haryana; (2018) 16 SCC 521**. Relevant paragraph of the aforesaid order is reproduced here-in-under:-

*"7. It is not necessary to refer to all the decisions of this Court articulating the mandate of the Constitution that there is implicit right under Article 21 for speedy trial which in turn encompasses speedy investigation, inquiry, appeal, revision and retrial. To determine whether undue delay has occurred, one must have regard to nature of offence, number of accused and witnesses, workload of the court and the investigating agency, systemic delays. Inordinate delay may be taken as presumptive proof of prejudice particularly when accused is in custody so that prosecution does not become persecution. Court has to balance and weigh several relevant factors. Though it is neither advisable nor feasible to prescribe any mandatory outer time limit and the court may only examine effect of delay in every individual case on the anvil of Article 21 of the Constitution, there is certainly a need for in-house mechanism to ensure that there is no undue delay in completing investigation. This obligation flows from the law laid down by this Court inter-alia in Maneka Gandhi versus Union of India<sup>1</sup>, Hussainara Khatoon (I) versus Home (1978) 1 SCC 248 Secy., State of Bihar<sup>2</sup>, Abdul Rehman Antulay versus R.S. Nayak (1992) 1 SCC 225 and P. Ramachandra Rao versus State of Karnataka (2002) 4 SCC 578."*

5. On the other hand, Sri M.C. Chaturvedi, learned Additional Advocate General assisted by learned AGA for the opposite party nos.1 and 2 (State) fairly states that investigation of the present case has already been completed in July, 2023 and, in this regard, report has already been forwarded to the State Government for its approval for last three months.

6. It is important to refer section 173 Cr.P.C., which is reproduced here-in-under:-

### **173. Report of police officer on completion of investigation.**

*"(1) Every investigation under this Chapter shall be completed without unnecessary delay."*

7. For ready reference, Section 482 Cr.P.C. is reproduced here-in-under:-

**Section 482 in The Code Of Criminal Procedure, 1973.**

*"482. Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."*

7. Having heard learned counsel for the parties and perusal of record and considering the aforesaid case-law cited above, it appears that learned Magistrate has passed the order dated 27.10.2023 in a very routine and arbitrary manner without applying its judicial mind, which is liable to be set-aside and it is, accordingly, set aside.

8. Further, the present Application is **disposed off** with a direction to the opposite party no.2/concerned authority to complete the exercise of necessary approval in the present case in order to fulfil the statutory requirements of Section 173(1) Cr.P.C. within a period of two weeks from today as it has been fairly admitted by Sri M.C. Chaturvedi, learned Additional Advocate General assisted by learned AGA for the opposite party nos.1 and 2 (State) that investigation of the present case has already been concluded in July, 2023 and, in this regard, report has already been forwarded to the State Government for its approval three months before and investigation is pending since last two years.

7. In above terms, the Application stands **disposed off**.

**Order Date :- 7.11.2023**

Ashutosh