

Court No. - 80

Case :- CRIMINAL MISC. WRIT PETITION No. - 18169 of 2023

Petitioner :- Sumit Rawat

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Shri Krishna Mishra,Ajay Mishra,Ashish Kumar Mishra

Counsel for Respondent :- G.A.

Hon'ble Subhash Chandra Sharma,J.

Heard learned counsel for the petitioner as well as learned A.G.A. for the State and perused the material on record.

The present writ petition under Article 226 of the Constitution of India has been moved with following prayers :-

I- To issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 25.7.2023 passed by the respondent no. 3 in case No. 2471 of 2022 (State Vs. Sumit Rawat) and the impugned order dated 9.10.2023 passed by respondent no.2, Commissioner, Agra Division Agra in Appeal No. 1214 of 2023.

II- To issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the present fact and circumstances of the case.

It is submitted by learned counsel for the petitioner that in this case, appeal was filed before the learned court of Commissioner on 17.8.2023 against the order passed on 25.7.2023 after delay of seven days regarding which delay condonation application u/s 5 Limitation Act was also filed but no any order was passed on the delay condonation application for admission of appeal but it was dismissed summarily at the stage of admission on merit. Further submitted that no merit of the case was considered by the learned court of Commissioner while passing the order in question. Only on the basis of cases shown to be pending against the petitioner, the appeal was dismissed holding that the petitioner was hardened criminal and his reputation was not good and he was danger to the public, though there is no any such material on record. In this way, the order passed by the learned court of commissioner cannot be

said to be lawful but is liable to be set aside.

Learned A.G.A. opposed the prayer as aforesaid and urged that on the basis of four cases, externment order was passed by Additional District Magistrate, Agra and all these facts were considered by learned Commissioner while deciding the appeal, therefore it cannot be said to be unlawful but this petition being devoid of merit is liable to be dismissed.

On considering the facts and circumstances of the case, submissions made by learned counsel for the petitioner as well as learned A.G.A. perusal of order passed by the learned commissioner dated 09.10.2023, it appears that the appeal was filed after delay of seven days before the learned court of commissioner with an application u/s 5 Limitation Act but at the stage of admission the appeal was dismissed by learned court of Commissioner without entertaining the application for condonation of delay, which cannot be said to be inordinate. In the order only gist of the matter has been mentioned with the submissions on the part of learned prosecutor and the number of cases registered against the petitioner. Without recording any finding to the fact in which manner the petitioner was goonda and his activity came within Section 2(b) of the aforesaid act, how his reputation is bad and he is dangerous to the public but dismissed the appeal summarily, this shows that no judicial mind has been applied while deciding the appeal. It cannot be said to be lawful and based on fact and law, therefore, it is liable to be set aside. The order passed by learned court of Commissioner dated 9.10.2023 is hereby set aside and petition is allowed. The matter is remanded back to the learned court of Commissioner to pass the order afresh after considering the facts and circumstances of the case and applying its judicial mind while recording the finding regarding his conclusion within a period of sixty days from the date of production of certified copy of this order.

Accordingly, the present petition is ***allowed***.

Order Date :- 13.12.2023

A. Singh