

Court No. - 87

Case :- APPLICATION U/S 482 No. - 44120 of 2023

Applicant :- Narendra Singh Kamboj

Opposite Party :- State Of U.P. And 4 Others

Counsel for Applicant :- Kashif Zaidi

Counsel for Opposite Party :- G.A.

Hon'ble Neeraj Tiwari,J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.
2. The present 482 Cr.P.C. application has been filed to quash the order dated 04.10.2023 passed by learned Sub-Divisional Magistrate, Behat, District Saharanpur, under Section 111 Cr.P.C. in Case No.10593 of 2023 (State vs. Narendra Kumar Kamboj), under Section 107, 116 and 151 Cr.P.C. and further quash the challan report dated 13.09.2023 along with recommendation report dated 20.09.2023 of Circle Officer, Behat, District Saharanpur.
3. Learned counsel for the applicant submits that opposite party No.5 has filed complaint against the applicant before the Police, upon which, Station House Officer, namely, Bijendra Singh, Police Station Biharigarh, District Saharanpur has submitted a report against the applicant for apprehension of breach of trust. Opposite party No.2/Sub-Divisional Magistrate had issued notice under Section 111 Cr.P.C. only against the applicant ignoring this fact that police report is filed against both the parties. He further submits that first of all, applicant is having no criminal history apart from that, even in case, police report is reliable, then the proceedings must have been initiated against both the parties, therefore, impugned order dated 04.10.2023 is bad and liable to be set aside.
4. Learned A.G.A. could not dispute the aforesaid facts.
5. I have considered the rival submissions made by the learned counsel for the parties and perused the record. From perusal of the police report dated 13.09.2023, it is apparently clear that it has been filed against both the parties i.e applicant and opposite party No.5, but instead of issuing notice against both the parties under Section 111 Cr.P.C., the proceedings has been initiated only against applicant.

6. Under such facts of the case, order dated 04.10.2023 passed by learned Sub-Divisional Magistrate, Behat, District Saharanpur, under Section 111 Cr.P.C. in Case No.10593 of 2023 (State vs. Narendra Kumar Kamboj), under Section 107, 116 and 151 Cr.P.C. is hereby **quashed**.

7. It is open to the Sub-Divisional Magistrate, Behat, District Saharanpur to pass fresh order in accordance with law.

8. It is made clear that in case, opposite party No.2 had already issued notice against the opposite party No.5 along with applicant, this order shall not be given effect.

9. Applicant and opposite party No.5 are at liberty to challenge the fresh order passed by the Sub-Divisional Magistrate, if aggrieved.

10. With the aforesaid directions, the present application is **allowed**.

Order Date :- 8.12.2023

Amit/ADY