

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 249 of 2023

Petitioner :- Azad Singh Keshari

Respondent :- State Of U.P. Thru. Addl. Chief Secy. Home Deptt. Civil Sectt. Lko. And Others

Counsel for Petitioner :- Shachindra Pratap Singh, Neeraj Kumar Rai, Rishad Murtaza, Rishad

Counsel for Respondent :- G.A., Gopal Narain Misra, Paresh Mishra, Santosh Kumar Jha

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Narendra Kumar Johari, J.

1. Heard learned counsel for the petitioner, learned A.G.A. for the State Respondents and Sri Paresh Mishra, learned counsel for the respondent no.4.

2. This writ petition has been filed with the following main prayers:-

*"i) to issue a writ, order or direction in the nature of certiorari quashing the impugned order, dated 25.11.2021, passed in Criminal Misc. Case No. 825/2021, under Section 156(3) of Cr.P.C., whereby the Learned Additional Session Judge/Special Judge, (P.C.) Act, Court No. 3, Lucknow had directed for registration of the FIR, contained in **Annexure No. 20** to the writ petition;*

*ii) to issue a writ, order or direction in the nature of certiorari quashing the impugned F.I.R/Case Crime No. 0446 of 2021, Under Sections 167, 504, 384, 389, 468, 471, 193 IPC and Sections 13 (1) of the Prevention of Corruption Act-1988, registered at Police Station- Hazratganj, District-Lucknow as contained in **Annexure No. 2** to the writ petition;*

iii) to issue a writ, order or direction in the nature of mandamus commanding the Investigating Agency not to arrest the petitioner in impugned F.I.R/Case Crime No. 0446 of 2021, Under Sections- 167, 504, 384, 389, 468, 471, 193 IPC and Sections 13 (1) of the Prevention of Corruption Act-1988, registered at Police Station- Hazratganj,

District-Lucknow;"

3. This Court had initially passed a detailed interim order on 12.01.2023, which is being quoted herein below:-

"Notice on behalf of respondent Nos. 1 to 3 has been accepted by the office of learned Government Advocate. Shri Gopal Narain Mishra, Advocate and Shri Paresh Mishra, Advocate have put in appearance on behalf of respondent No.4, who have filed Vakalatnama, which is taken on record.

Let counter affidavit be filed by the respondents within three weeks. One week time thereafter shall be available to the petitioner to file rejoinder affidavit.

List after expiry of the aforesaid period.

Under challenge in this petition is the First Information Report No.0446 of 2021, lodged on 9th December, 2021, under Sections 167, 504, 384, 389, 468, 471, 193 IPC and Section 13 (1) of the Prevention of Corruption Act, 1988, at Police Station Hazratganj, District Lucknow.

It has been argued by learned counsel representing the petitioner that the order dated 25th November, 2021, passed by the learned Additional Session Judge/Special Judge (P.C. Act), Lucknow, pursuant to which F.I.R. No.0446 of 2021 has been lodged on 9th December, 2021 under Sections 167, 504, 384, 389, 468, 471, 193 IPC and Section 13 (1) of the Prevention of Corruption Act, 1988 at Police Station Hazratganj, District Lucknow itself is not sustainable for the reason that in view of the newly inserted provision of Section 17-A in the Prevention of Corruption Act, 1988, no enquiry or investigation into any offence alleged to have been committed by a public servant under the said Act can be conducted by any police officer where the alleged offence is relatable to such public servant in discharge of his official functions or duties without the previous approval. It has been argued by learned counsel for the petitioner that no such sanction or

permission or approval of the competent authority under Section 17-A of the Prevention of Corruption Act, 1988 was obtained in this case. Learned counsel for the petitioner has also argued that in fact the very inception of the proceedings under Section 156 (3) of the Cr.P.c. by respondent No.4 is malafide.

The matter requires consideration.

Accordingly, we have required the respondents to file the reply.

Having regard to the overall facts and circumstances of the case, we provide that till the next date of listing, no coercive action shall be taken against the petitioner in connection with the impugned First Information Report dated 09.12.2021.

We are conscious that ordinarily the court should be lax in staying the investigation, however, having regard to the facts of the case and also taking into account the provisions of Section 17-A of the Prevention of Corruption Act, 1988 and further the fact that no prior approval as per requirement of Section 17-A in this case appears to have been obtained, we provide that investigation pursuant to the impugned First Information Report shall stand deferred till previous approval under section 17A of the Prevention of Corruption Act is accorded.

Office is directed to show the names of Shri Gopal Narain Mihsra and Shri Paresh Mishra in the cause list as counsels for the respondents when the case is listed next."

4. From the same interim order, it is evident that the Court had stayed the investigation of the impugned F.I.R. till prior approval under Section 17(A) of the Prevention of Corruption Act is given by the State Government.

5. The petitioner has filed a supplementary affidavit dated 17.10.2023 wherein he has brought on record the letter sent by the Joint Police Commissioner, Headquarters/Crime, dated 14.06.2023 addressed to the Principal

Secretary(Home), Government of U.P. informing of the interim order granted on 12.01.2023 and also the stay of investigation in Case Crime No. 446 of 2021 till prior permission is given by the State Government and the request has been made that such permission be granted at the earliest. The State Government has in terms sent a letter dated 17.08.2023 addressed to the Police Commissioner, Lucknow referring to the request dated 14.06.2023 and saying therein that after going through the report/comments made available by the department on 28.07.2023. The State Government has not found it appropriate to issue any prior permission under Section 17(A) of the Prevention of Corruption Act has requested.

6. After going through annexures no. 1 and 2 to the writ petition, this Court finds that without such permission under Section 17 (A), no order under Section 156 (3) of the Cr.P.C. in Crime Misc. Case No. 825 of 2021 as impugned in this writ petition could have been passed by the Additional Sessions Judge/ Special Judge, Corruption Prevention Act, Court No.3, Lucknow. Hence, the order dated 25.11.2021 is **quashed** also the F.I.R. in Case Crime No. 446 of 2021 under Sections 167, 504, 384, 389, 468, 471 and 193 of the I.P.C. and Section 13 (1) of the Prevention of Corruption Act, 1988, registered at Police Station - Hazratganj, District - Lucknow also stands **quashed**.

7. Accordingly, the writ petition stands **allowed**.

Order Date :- 17.11.2023

Darpan Sharma