

Court No. - 8

Case :- WRIT - A No. - 3421 of 2003

Petitioner :- Ram Sagar Rakesh

Respondent :- State Of U.P. Through The Prin. Secy. Deptt. Of Home And 2

Counsel for Petitioner :- A.P. Singh

Counsel for Respondent :- C.S.C.

Hon'ble Saral Srivastava,J.

1. Heard Sri A.P. Singh, learned Senior Advocate, assisted by Sri Amrendra Pratap Singh, learned counsel for the petitioner and learned Standing Counsel for the respondents.

2. By means of the present writ petition, the petitioner has prayed for quashing of the charge sheet dated 01.05.2003, enclosed as Annexure-1 to the writ petition.

3. While the petitioner was posed as Officer-in-Charge of Police Station Jalalpur, District Ambedkar Nagar, an incident took place in the intervening night of 14/15.06.2001 in which three persons were murdered. The petitioner was charged for dereliction in duty on the ground that he did not register the F.I.R.

4. The petitioner approached this Court for quashing of the charge sheet on the ground that the District Magistrate, Ambedkar Nagar by the order dated 17.06.2001 ordered for Magisterial Enquiry and asked the authorities not to take further action in the matter till the Magisterial Enquiry is completed. The Magisterial Enquiry was completed and a report was submitted on 11.07.2001 recommending for registering the F.I.R. Thereafter, the F.I.R. was registered on the same day i.e. 11.07.2001.

5. The case of the petitioner is that no charge against the petitioner is made out, inasmuch as there was an order of the District Magistrate, Ambedkar Nagar dated 17.06.2001 restraining further action in the matter till the conclusion of the Magisterial Enquiry, and as soon as recommendation was made on 11.07.2001 for registering F.I.R., the petitioner registered the F.I.R.. Consequently, it is alleged that the entire enquiry proceeding smacks of malafide and the enquiry proceeding is liable to be set aside.

6. A counter affidavit has been filed stating therein that the alleged report (referred in paragraph no.2 of the writ petition) that states that in the night of 14/15.06.2001, few dacoits/criminals entered the house of Ram Bharosey with an intention to commit robbery/dacoity and captured Ram Bharosey was false, and report was registered by the petitioner under Section 393/307 I.P.C. and Section 25 of the Arms Act himself on his own by taking signatures of Gram Pradhan. Thereafter, the final report was submitted in the said case crime registered by the petitioner. It is further stated that the petitioner had knowledge about the incident of murder, but no action was taken by him on the basis of true facts. Consequently, a complaint was made to the higher authorities and the District Magistrate, Ambedkar Nagar assigned the Magisterial Enquiry to the joint committee consisting of Sub-Divisional Magistrate and Circle Officer, Jalalpur, and on enquiry it was found that the incident was a murder and, thereafter, the crime of murder was registered.

7. It is also pleaded that the complainant, namely, Shiv Prasad Tripathi met the petitioner at the place of incident in the morning on the date of occurrence and he had submitted the report to the

petitioner. Thereafter, the petitioner asked the complainant to come to the police station to register the report, the complainant went to the police station and he was told by the Head Constable Chhavi Lal to wait, but the report of the complainant Shiv Prasad Tripathi was not lodged till evening. It is stated that since it was a case of dereliction of duty which falls within the ambit of major punishment, consequently, a recommendation had been made to conduct the enquiry.

8. The only ground on which the charge sheet has been challenged is that the the District Magistrate, Ambedkar Nagar by order dated 17.06.2001 ordered for Magisterial Enquiry and by the said order, the District Magistrate restrained any further action in the matter, due to which F.I.R. was not registered and a report was immediately lodged after the Magisterial Enquiry recommended for lodging the F.I.R.

9. The respondents have categorically stated that the petitioner did not discharge his duty diligently and properly inasmuch as he had knowledge about the commission of offence and yet he registered the case on false facts, and subsequently submitted final report. The said facts has been stated in paragraph no.4 of the counter affidavit.

10. In paragraph no.6 of the counter affidavit, it is also stated that the complainant met the petitioner and requested for lodging the F.I.R. and the petitioner asked him to come to the police station and thereafter the complainant went to the police station and sat there for whole day, but in spite of that no F.I.R. was lodged, and the Magisterial Enquiry was ordered on account of the complaint submitted by the complainant to the higher authorities raising the grievance for non-registering the F.I.R. of the incident. It is settled

in law that charge sheet or disciplinary proceeding can be quashed if it has been initiated malafidely or against any statutory provision of law.

11. The petitioner has not filed any rejoinder affidavit denying the averments made in the counter affidavit. There is no material on record to indicate that the charge sheet was issued malafidely or against any provision of law.

12. This Court cannot become an enquiry officer and find out whether the charges against the petitioner are true or not. It is the domain of the enquiry officer and this Court cannot do so in exercise of its power under Article 226 of the Constitution of India.

13. Consequently, the writ petition lacks merit. It is, accordingly, **dismissed** with no order as to costs.

Order Date :- 8.11.2023

NS