

Court No. - 9

Case :- CRIMINAL MISC. WRIT PETITION No. - 4405 of 2023

Petitioner :- Saiyad Sahil Ahmad

Respondent :- State Of U.P. Thru. Prin. Secy. Home, Lucknow And 3 Others

Counsel for Petitioner :- Atmad Hasan Idrisi, Abhishek Srivastava

Counsel for Respondent :- G.A.

Hon'ble Dinesh Kumar Singh, J.

Hon'ble Syed Qamar Hasan Rizvi, J.

1. Heard Shri learned counsel for petitioner and Shri learned Standing Counsel appearing for the State-respondents.

2. The present petition under Article 226 of the Constitution of India has been filed seeking following reliefs:-

"I. Issue a writ, order or direction in the nature of Mandamus thereby directing/commanding the investigating agency to conduct fair proper and impartial investigation in F.I.R. dated 28.01.2023 bearing F.I.R. No.0039/2023 under Sections 376, 498-A, 323, 504 and 506 I.P.C. & 3/4 Dowry Prohibition Act, 1961 lodged at Police Station-Mill Area, District-Rae Bareli lodged by opposite party No.4. True copy of F.I.R. is being annexed as Annexure No.1 to the petition.

II. Issue a writ, order or direction in the nature of Mandamus thereby commanding the investigating agency/opp. no.1 to 3 to take into consideration the application dated 25.05.2023 contained as annexure No.12 to the petition and investigate in pursuance whereof.

III..."

3. The petitioner is the elder brother of the husband of the complainant. After recording the statement of the prosecutrix under Section 161 and 164 Cr.P.C. and also statements of other witnesses, medical report etc., the charge-sheet has been filed against the petitioner under Section 376, 498-A, 323, 504 and 506 I.P.C. & Section 3/4 Dowry Prohibition Act and against other accused persons, the charge-sheet has been filed under Sections 498-A, 323, 504 and 506 I.P.C. and Section 3/4 Dowry Prohibition Act on 09.05.2023.

4. Learned Counsel for the petitioner submits that the investigation has not been carried out in proper, fair and impartial manner. The evidence has not been collected by the Investigating Officer which is in the form of electronic conversation between the husband and wife

after she left her matrimonial home and lodged the F.I.R. The charge-sheet against the petitioner has been filed only on the basis of the statement of the prosecutrix recorded under Section 161 and 164 Cr.P.C. There is no evidence to suggest any offence under Section 376 except the statement of the prosecutrix.

5. On the other hand, Shri S.P. Singh, learned A.G.A. for the State submits that the Investigating Officer after collecting the evidence has filed the charge-sheet against the petitioner under Sections 376, 498-A, 323, 504 and 506 I.P.C. and Section 3/4 Dowry Prohibition Act on 09.05.2023.

6. The petitioner may move an appropriate application under Section 173(8) Cr.P.C. before the concerned Magistrate for further investigation, if he is not satisfied with the investigation. However, this Court should not interfere with the F.I.R. or the charge-sheet submitted by the Investigating Agency.

7. Considering the aforesaid submissions, we are of the view that this petition has lost its efficacy after the charge-sheet has been filed. If the petitioner is not satisfied with the investigation carried out, he may take recourse to alternate remedy as may be advised to him. If the petitioner files such an application before the concerned Magistrate, the same shall be considered in accordance with law and appropriate order shall be passed.

8. With the aforesaid liberty, the present petition stands finally **disposed of**.

(Syed Qamar Hasan Rizvi,J.) (Dinesh Kumar Singh, J.)

Order Date :- 21.6.2023

Piyush/-