

Court No. - 12

Case :- APPLICATION U/S 482 No. - 9608 of 2023

Applicant :- Ankita Gupta

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home, Lko. And Others

Counsel for Applicant :- Ram Kumar Srivastava Ram Kumar

Counsel for Opposite Party :- G.A.,Ashish Mishra

Hon'ble Rajeev Singh,J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the material brought on record.

2. On 04.10.2023, following order was passed.

"1. Mr. Ashish Mishra, Advocate filed Vakalatnama on behalf of private respondents is taken on record.

2. Heard learned counsel for the applicant, learned counsel for private respondents as well as learned A.G.A. for the State.

3. The present application has been filed for quashing the order dated 27.07.2023 passed in Case No.80689 of 2022 arising out of Case Crime No.59 of 2020; for issuing direction to Special Chief Judicial Magistrate (Custom), Lucknow to restore back the application U/s 173 (8) Cr.P.C. on its original number, decide the same afresh there by allowing the said application and further summon Akash Yadav U/s 354-Kha, 504, 506 I.P.C. along with Section 67 of I.T. Act as well as summon Shashi Prakash in all the aforesaid sections.

4. Learned counsel for the applicant submits that F.I.R. of the case in question was lodged U/s 354-A, 504, 506 I.P.C. and 67 of I.T. Act and Investigating Officer tried to twist the investigation in favour of accused persons. He further submits that the contents of statement of victim recorded U/s 161 as well as 164 Cr.P.C. were not considered and charge-sheet was filed for the offense U/s 67 of I.T. Act. He further submits that application was moved by victim before Assistant Commissioner of Police for further investigation but only weigh further investigation was conducted and 09 supplementary parchas were prepared. In this connection, in parch No./SCD/09 dated 19.06.2021, it was alleged by Investigating Officer that on the basis of contents of statement of victim recorded U/s 161 as well as 164 Cr.P.C., several persons were interrogated but he was unable to get any evidence and investigation was concluded. It is further submitted that application was moved before trial court for further investigation U/s 173 (8) of Cr.P.C. but the same was also rejected by trial court with the observation that U/s 216 Cr.P.C., grievance of the informant can be considered.

5. Learned counsel for the applicant further submits that it is well settled by Hon'ble Apex Court in the case of Devendra Nath Singh Vs. State of Bihar and others reported in SLP (Crl.) No.9609 of 2022 dated 12.10.2022 that, in case, the investigation is not done by Investigating Officer properly then it is obligatory on the part of trial court to consider the application

U/s 173 (8) Cr.P.C. and pass appropriate order. It is, thus, submitted that indulgence of this Court is necessary.

6. Learned A.G.A. as well as learned counsel for complainant vehemently opposes the prayer of applicant and submits that after framing of charge, in case, offenses are made out in the deposition of victim then charges can be altered at any stage. They do not dispute this fact that as per the statement of victim, serious allegations have been leveled. They further submit that there is no illegality in the order passed by learned trial court.

7. Considering the submissions of learned counsel for the applicant, learned counsel for complainant, learned A.G.A. and going through the contents of application as well as other relevant documents including the statement of victim, the matter requires consideration.

8. List this case on 31.10.2023.

9. On the next date Mr. Shiv Charan Lal, Inspector, PNO No. 982491038 and Mr. Satish Kumar Yadav, Inspector shall appear in person before this Court."

3. Mr. Raj Kumar, S.H.O., P.S. Hasanganj, District Lucknow is present before this Court.

4. Learned counsel for the applicant submits that during the course of investigation, statement of the applicant was not considered by the Investigating Officer in correct perspective and he filed the charge sheet only for the offences under Section 67 of the I.T. Act. It is, thus, submitted that the indulgence of this Court is necessary.

6. Learned A.G.A. opposes the prayer of the applicant and while drawing the attention of the Court towards the statements of the victim under Sections 161 and 164 Cr.P.C. and the Parchas prepared during the course of further investigation, submits that on the basis of evidences collected by the Investigating Officer, charge sheet was submitted and, in case, any evidence is found during the course of trial, it shall always be open to the trial court to alter the charge at any stage. It is, thus, submitted that the application is liable to be dismissed.

7. Considering the arguments advanced by the learned counsel for the applicant, learned A.G.A. and going through the contents of the application as well as other relevant documents, it is evident that after investigation, charge sheet was filed by the Investigating Officer for the offences under Section 67 of the I.T. Act, on which, cognizance has

already been taken by the court below. Indisputably, in case, any evidence is found during the course of trial, the charges may be altered by the court below.

8. In view of above, the application is misconceived and, accordingly, stands dismissed.

Order Date :- 31.10.2023

VKS