

Court No. - 28

Case :- APPLICATION U/S 482 No. - 9726 of 2023

Applicant :- Smt. Sunita Shukla

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

Counsel for Applicant :- Sonu Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Shree Prakash Singh,J.

Heard Sri Shashank Tilhari, learned counsel for the applicant, Sri Aniruddh Kumar Singh, learned A.G.A.-I for the State and perused the material placed on record.

Instant application has been filed with the prayer to quash the entire criminal proceedings including the implementation and operation of non-bailable warrant issued in Crime No.391 of 2018 (State Vs. Pawan Kumar Shukla and another) under Section 406/420 I.P.C., Police Station Wazirganj, District Lucknow.

Learned counsel for the applicant submits that the complainant is the stepson of the applicant and there was a dispute with respect to 'will' which is pending before the civil court and, therefore, the dispute, if any, is civil in nature and that is being given colour of criminality.

After the aforesaid argument, learned counsel for the applicant has drawn attention towards the order dated 6.9.2019 passed by this Court by which 'the applicant was given liberty to move discharge application before the trial court concerned and trial court was directed to decide the discharge application of the applicant within a period of one month in accordance with law'. He submits that the applicant moved discharge application in September 2019 and that was kept on pending and, thereafter, on 24.6.2022, the last opportunity was provided to the learned counsel for the applicant to press the discharge application but due to unavoidable circumstances, he could not appear before the trial court on 3.8.2022 and the trial court passed the order, rejecting the discharge application of the applicant.

He further argued that the discharge is valuable right of the accused but the applicant being an old age lady could not appear before the trial court on 3.8.2022 and discharge application, which was pending before the trial court since long

back, was rejected and no reason was assigned thereof, as in fact there was no fault on the part of the applicant so as to pendency of the discharge application since long time. He also added that even otherwise, the direction of this Court dated 6.9.2019 has also been violated in the aforesaid premises, therefore, submission is that the order dated 3.8.2022 may be set aside and the applicant may be given further opportunity to file discharge application and press the same and, in turn, the trial court may be directed to decide the same within stipulated period of time as may be fixed by this Court.

On the other hand, learned counsel for the State has submitted that there is no merit in the contention of the learned counsel for the applicant and, thus, the application is liable to be dismissed.

Having heard learned counsel for the parties and after perusal of the record, it transpires that a civil dispute arose in between the complainant and the present applicant and civil litigation is also going on before the trial court for its consideration regarding a will deed. In fact, prima facie there seems to be the dispute civil in nature.

Further this Court has noticed that the order of rejection on discharge application, has been passed after four years from the date of passing of the order of this Court and that too without assigning any reason. Further this Court has also noticed the fact that the present applicant is an old lady of 64 years and the reason for the non appearance on 3.8.2022 has been explained.

In view of the aforesaid, the order dated 3.8.2022 passed by the trial court is hereby set aside.

The matter is remitted back to the trial court concerned and the applicant is given liberty to move discharge application before the trial court within a period of 30 days through her counsel and if such an application is filed the same shall be decided by the trial court within further period of 45 days.

Instant application is hereby allowed in the aforesaid terms.

Order Date :- 10.10.2023
Ram Murti