

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 7811 of 2023

Petitioner :- Vinod Kumar Yadav And Others

Respondent :- State Of U.P. Thru. Prin. Secy. Deptt. Home Lko. And Others

Counsel for Petitioner :- Lalji Yadav

Counsel for Respondent :- G.A.

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Narendra Kumar Johari,J.

1. Heard learned counsel for the petitioners, learned A.G.A. for the State Respondents and Sri Gyanendra Singh, Advocate who has filed his vakalatnama on behalf of the opposite party no. 4.

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

"(i) issue a writ, order or direction in the nature of certiorari quashing the impugned First Information Report dated 27.2.2022 F.I.R. No. 0075 of 2022 Under Section 452, 380, 506, 427, 395 IPC, at Police Station Kunda, District- Pratapgarh, as contained in Annexure No.1 to the writ Petition, so far as it relates to the Petitioners.

(ii) issue a writ, order or direction in the nature of Mandamus directing the opposite parties not to arrest the Petitioners in F.I.R. No. 0075 of 2022 Under Section 452, 380, 506, 427, 395 IPC, at Police Station Station Kunda, District- Pratapgarh, as contained in Annexure No.1 to the writ Petition."

3. It has been submitted by learned counsel for the petitioners that the petitioners have not named in the F.I.R. As per the prosecution story narrated in the F.I.R. dated 27.02.2022 only one name of Gulshan Yadav S/o Late Sundar Lal Yadav has been mentioned.

4. It has also been submitted that Gulshan Yadav has approached this Court by filing a writ petition against the Same F.I.R., bearing Criminal Misc. Writ Petition No. 6371 of 2023 which has been disposed of by this Court on 16.08.2023 by saying that the petitioner, namely, Gulshan Yadav was directed to approach the Court concerned for recall of has non-bailable warrant had already issued against him.

5. Learned counsel for the petitioner has also pointed out the

Order passed by the Judicial Magistrate wherein detailed reference has been made to the statement of the informant and also the incident as mentioned in the impugned F.I.R. and the Court has found that Section 395 of the I.P.C. has not been made out. Now all the other Sections involved in the impugned F.I.R. i.e. Sections 452, 427, 506 of the I.P.C. carry the sentence of upto 7 years of imprisonment, and therefore, they are entitled to the benefit of the judgement rendered by the Hon'ble Supreme Court in the case of ***Arnesh Kumar Vs. State of Bihar***, reported in ***(2014) 8 SCC 273*** has been given to the main accused, namely, Gulshan Yadav.

6. Learned counsel for the private respondent has produced before this Court typed copy of the Statement recorded under Section 164 of the Cr.P.C. of the victim/informant. The informant had mentioned atleast 10 other names in the said statement including the name of the petitioners.

7. This Court is of the prima facie opinion that although the Trial Court has not considered other Sections as mentioned in the impugned F.I.R., still since the main accused has been granted benefit of judgement rendered by the Hon'ble Supreme Court in the case of ***Arnesh Kumar Vs. State of Bihar***, reported in ***(2014) 8 SCC 273***, it should also be granted the same benefit to the petitioners.

8. Accordingly, we ***dispose of*** this petition with the direction to the police authorities concerned to follow the mandate of Section 41A Cr.P.C. and also the directions issued by the Hon'ble Supreme Court in the case of ***Arnesh Kumar Vs. State of Bihar***, reported in ***(2014) 8 SCC 273***.

Order Date :- 10.10.2023

Darpan Sharma