

Court No. - 12

Case :- APPLICATION U/S 482 No. - 10520 of 2023

Applicant :- Shiv Nandan

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.
And 4 Others

Counsel for Applicant :- Neelam Verma, Sanjive Kumar
Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh, J.

1. Heard learned counsel for the applicant as well as learned A.G.A. for the State and perused the record.

2. The present application has been filed for quashing the impugned order dated 08.04.2022 passed by learned Judicial Magistrate, Lucknow in protest application and impugned order dated 23.03.2023 passed by learned Additional District and Sessions Judge, Court No. 6, Lucknow; for directing opposite party no. 1 to conduct further enquiry of final report no. 4163 of 2021 filed in Case Crime No. 695 of 2019 U/s 420, 467, 468, 471, 504, 506 I.P.C., Police Station- Sarojini Nagar, District- Lucknow.

3. On 23.11.2023 following order was passed:-

"1. Heard learned counsel for the applicant as well as learned A.G.A. for the State.

2. On 20.11.2023 following order was passed:-

"1. In pursuance of the earlier order dated 28.10.2023, Sub Inspector-Mr. Tribhuvan Singh is present before this Court and informs that Branch Manager, S.B.I., Sainik School Branch, Sarojini Nagar, Lucknow informed that merely on the basis of description of cheque, the account number cannot be worked out.

2. However, when Mr. Abhishek Kumar Aman, Chief Manager, S.B.I., High Court Branch, Lucknow was requested to assist the Court that whether on the basis of description of cheque details, the number of the Bank account can be traced, he informs that it may be possible.

3. List this case on 23.11.2023 at 11.30 a.m.

4. On the next date, Sub Inspector-Tribhuvan Singh shall again appear before this Court.

5. It is also expected from Mr. Abhishek Kumar Aman, Chief Manager,

S.B.I., High Court Branch, Lucknow to provide the details of the account number related to Cheque Nos. 679364, 679365 and 679366 dated 16th February, 2018 issued by S.B.I., Red Cross Building Branch, Muzaffarpur."

3. In pursuance of aforesaid order, Investigating Officer is present before this Court.

4. It is informed by Chief Manager, S.B.I., High Court Branch, Lucknow that account number and details of the said person including aadhar card number etc. is necessary.

5. List this case on 11.12.2023.

6. On the next date, Investigating Officer concerned shall again appear in person before this court along with complete details of the said accounts etc. in compliance of earlier order dated 20.11.2023."

4. In pursuance of aforesaid order, Mr. Tribhuvan Singh, Sub Inspector is present today before this Court.

5. Learned counsel for the applicant submits that uncle of the applicant, namely, Daya Ram alias Data Ram was the recorded tenure holder of property in question as he was unable to move, the sale deed in question was obtained by respondent no. 2-Avinash Kumar s/o Ranveer Singh r/o Sarsawan, Arjunganj, Gonsaiganj, Lucknow from some imposters by showing the sale consideration of Rs. 8,75,000/- The aforesaid payment was made through Cheque Nos. 679364, 679365, 679366 dated 16.02.2018, S.B.I., Red Cross Building Branch, Muzaffarpur but neither any sale deed was executed by Daya Ram nor any payment was received in his account. It is further submitted that after Daya Ram's death, the mutation was claimed on the basis of sale deed, in this connection, objection was raised. It is further submitted that Investigating Officer, without making any investigation about the fact that whether any sale consideration was paid in the account of recorded tenure holder or no, submitted final report in the most mechanical manner. It is further submitted that the protest petition was filed by applicant which was rejected by trial court without considering the fact that whether the sale consideration was received in the account of the recorded tenure holder or not, thereafter, revision was also filed which was also rejected. It is, thus, submitted that indulgence of this Court is required.

6. Learned A.G.A. vehemently opposes the prayer of applicant and submits that there is no illegality in the order passed by learned trial court as well as learned revisional court as signatures of vender was verified by the F.S.L. He does not dispute this fact that it was not examined by Investigating Officer that whether the cheques mentioned in the sale deed

were credited in the account of recorded tenure holder or not.

7. Considering the submissions of learned counsel for the applicant, learned A.G.A. and going through the contents of application as well as other relevant documents; it is evident that it was obligatory on the part of Investigating Officer to investigate this fact that whether cheques mentioned in the sale deed were credited in the account of recorded tenure holder or not. In such circumstances, learned trial court has wrongly rejected the protest petition/application.

8. In view of above, this Court is of the view that the present application U/s 482 Cr.P.C. is **allowed** and the protest petition/application dated 21.03.2022 filed by applicant is also **allowed**. The impugned order dated 08.04.2022 passed by learned Judicial Magistrate, Lucknow in protest application/petition and impugned order dated 23.03.2023 passed by learned Additional District and Sessions Judge, Court No. 6, Lucknow are hereby **set aside**.

9. Commissioner of Police, Lucknow is directed to depute some responsible office for further investigation and conclude the same by submitting the report to court concerned.

10. The presence of above-mentioned officer is hereby dispensed with.

11. Office is directed to communicate this order to trial court, forthwith.

Order Date :- 11.12.2023

Arpan