

Court No. - 12

Case :- APPLICATION U/S 482 No. - 9967 of 2023

Applicant :- Jitendra Kumar Srivastava Advocate
And 3 Others

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Rohit Jaiswal, Adarsh
Pratap Singh, Mohit Gupta, Rajneesh Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh, J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.

2. The present application under Section 482 Cr.P.C. is filed with the prayer to quash the impugned order dated 1.8.2023, passed by Opposite Party No.2, under Sections 116(3) Cr.P.C. in Case No.1121/2023, "*State of U.P. Vs. Anil Kumar Srivastava & Ors*".

3. Learned counsel for the applicant submits that notice dated 1.8.2023 was issued by the Assistant Commissioner of Police/Executive Magistrate, Chowk, Commissionerate Lucknow in violation of circular dated 13.1.2021 and 31.1.2021 issued by Secretary, Department of Home, Government of U.P. as well as D.G.P., U.P. He also submits that the notice was issued on 1.8.2023 and the applicants were directed to appear on 14.8.2023 for giving reply and also explain that why order may not be passed for furnishing two sureties of amounting Rs.50,000/-, as on the same date, direction was issued for submission of two sureties of amounting Rs.50,000/- by the Assistant Commissioner of Police, which is clear violation of provisions of Chapter VII of Cr.P.C., therefore, indulgence of this Court is necessary.

4. Learned A.G.A. opposed the prayer of the applicant and submits that applicant may appear before the concerned authority and apprise all these facts but he does not dispute this fact that the notice was issued on 1.8.2023 with the

direction to the applicants to appear on 14.8.2023 for giving reply that why the sureties of Rs.50,000/- may not be asked from them but on the same day, order for furnishing the sureties was issued and he also conceded this fact that the impugned orders may be quashed with liberty to pass a fresh order.

5. Considering the submissions of learned counsel for the parties, going through the contents of the application, notice as well as other relevant documents, as it is undisputed that notice was issued on 1.8.2023 on the basis of police report, in which, the alleged complaint was not annexed and thereafter, on 1.8.2023, in the notice, it was mentioned that matter is listed on 14.8.2023 and the applicants may submit explanation that why surety of Rs.50,000/- may not be asked from them but on the same day, order was passed for furnishing of sureties of Rs.50,000/-, therefore, this is a clear violation of principle of natural justice, accordingly, notice dated 1.8.2023 as well as order dated 1.8.2023 for furnishing surety is **set aside** with liberty to Assistant Commissioner of Police/Executive Magistrate, Chowk, Commissionerate Lucknow to pass a fresh order, in accordance with the law.

6. In view of the above, the present application under Section 482 Cr.P.C. is **allowed**.

Order Date :- 12.10.2023
Gaurav/-