

Court No. - 12

Case :- APPLICATION U/S 482 No. - 9869 of 2023

Applicant :- Sahabdeen @ Munna

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

Counsel for Applicant :- Pradeep Kumar Singh Vats

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh,J.

1. Supplementary affidavit filed by learned counsel for the applicant is taken on record.
2. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.
3. Present application has been moved by the applicant for quashing the summoning order dated 19.01.2023 and subsequent impugned order dated 06.09.2023 passed by the Additional Chief Judicial Magistrate, Court No.19, Barabanki as well as entire proceedings of Crl. Case No.342 of 2023 (State Vs. Sahabdeen @ Munna and Anr.) arising out of Case Crime No.322 of 2018, under Sections 376D, 504 and 506 I.P.C., P.S. Safdarganj, District- Barabanki.
4. Learned counsel for the applicant submitted that the marriage of Shridevi/sister of applicant was solemnized with Naumi Lal/brother of informant of the present case. He further submitted that the sale deed was executed by the father-in-law (sasur) of the sister of applicant in favour of his daughter Soni/informant of the present case, thereafter, Naumi Lal/brother-in-law (bahnoi) of the applicant filed a suit for cancellation of sale deed, thereafter, Shridevi lodged a F.I.R. on 10.09.2018 in regard to the incident dated 24.06.2018, thereafter, charge sheet was filed against Alakh Ram, husband of informant of the present case, later on, with the intention to make pressure on Shridevi, present F.I.R. was lodged against the applicant who is her brother and he was implicated along with his nephew, and after detailed investigation, final report was submitted by the Investigating Officer, thereafter, protest petition was filed by the victim of the present case and the final report was rejected by the Court below in the most mechanical

manner without considering the submissions of independent witnesses, therefore, kind indulgence of this Court is necessary.

5. Learned A.G.A. opposed the prayer of applicant and submitted that as it is well settled by the Hon'ble Apex Court in the case of *Nupur Talwar Vs. C.B.I., Delhi.* reported in **(AIR) 2012 SC 9** that even if the closure report is filed by the Investigating Officer, even then, Court can take cognizance in the case and the case be tried as a state case. He further submitted that in the present case, statement of victim was recorded under Section 164 Cr.P.C. but without considering her statement, final report was submitted by the Investigating Officer merely on the basis of some independent witnesses. He further submitted that statement of victim recorded under Section 164 Cr.P.C. cannot be discarded, therefore, trial court has rightly passed the impugned order.

6. Considering the submissions of learned counsel for the parties, going through the contents of application, statement of victim recorded under Sections 161 and 164 Cr.P.C, in which, the victim has supported the prosecution version but merely on the basis of some independent witnesses, testimony of victim was discarded and final report was submitted, therefore, trial court has rightly allowed the protest application and taken cognizance and there is no illegality in the impugned order, therefore, I am of the view that the application is liable to be dismissed.

7. Accordingly, the application is hereby **dismissed**.

8. However, it is open to the applicant to move a bail application before the Competent Court. In case, the bail application is moved before the Competent Court, the same shall be decided, expeditiously in accordance with law.

Order Date :- 12.10.2023

V. Sinha