

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 8003 of 2023

Petitioner :- Rakesh Kumar Gupta

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

Counsel for Petitioner :- Suchita Singh

Counsel for Respondent :- G.A.

With

Case :- CRIMINAL MISC. WRIT PETITION No. - 8049 of 2023

Petitioner :- Smt. Reena Gupta And Another

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

Counsel for Petitioner :- Daya Shankar Yadav

Counsel for Respondent :- G.A., Suchita Singh

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Karunesh Singh Pawar,J.

1. Heard learned counsel for the petitioners in both the writ petitions and learned A.G.A. who appears on behalf of the State Respondents.
2. These writ petitions have been filed with the following main prayers:-

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i. Issue a writ, order or direction in the nature of Mandamus commanding the opposite party no. 2 to transfer the investigation of the FIR No.-0346 of 2023, under sections-406 and 420 Indian Penal Code, Police Station-Paliya, District-Lakhimpur Kheri to some other efficient police officer not below the rank of the Deputy Superintendent of Police and to take effective and necessary departmental and punitive action against the Opposite Party No.-04 and punish him for his misconduct towards the petitioner, as contained in Annexure No. 01 to this writ petition.

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i) to issue a writ order or direction in the nature of certiorari, thereby quashing the impugned First Information Report, registered by the opposite party no. 4 at Case Crime No. 0346 of 2023 U/s 406,420 1.P.C., on 23.09.2023 at Police Station-Palia, District Kheri, contained, as annexure no. 1 to the writ petition."

3. On the request of learned counsel for the petitioner that the writ petition praying for quashing of F.I.R. is coming up today i.e. on 17.10.2023, the writ petition was directed to be taken up together with the writ petition proposed to be filed by him today i.e. Writ Petition no. 8049 of 2023. It has coming up for orders in fresh list of matters. This Court has gone through the F.I.R. and also the pleadings on record, finds that the petitioners in Writ Petition no. 8049 of 2023 are the witnesses of the nominee and Late Laxmi Narayan Gupta had hired a locker in Punjab and Sindh Bank Branch at Palia, Kheri. Abhishek Gupta Son of Mukesh Kumar Gupta was the nominee of the said locker, Sri Abhishek Gupta made an application on 28.07.2023 regarding handing over the inventory of all the articles in the locker. Sri Abhishek Gupta opened the locker and videography was done in the presence of both the petitioners, who are not the nominee but were witnesses to the opening of the locker. The inventory was prepared on 28.07.2023 by the Bank Officials before the nominee Abhishek Gupta and both the witnesses i.e. the petitioners has been filed as annexure to the Writ Petition No. 8049 of 2023.

4. In writ petition No. 8003 of 2023, the petitioner has alleged that he had tried to lodge the F.I.R. under Section 409 of the Cr.P.C. against the Bank Officials and against the nominee and the witnesses, but the police colluded with the nominee and the witnesses and lodged the F.I.R. only under Section 406 and 420 of the I.P.C. He wishes that the Investigation be transferred to some other police station.

5. This Court is of the opinion that insofar as Writ Petition No. 8049 of 2023, all the Sections invoked against the petitioner in the impugned F.I.R. carry the sentence of upto 7 years of imprisonment and therefore the petitioners are entitled for the benefit of the judgement rendered by the Supreme Court in the case of **Arnesh Kumar Vs. State of Bihar**, reported in **(2014) 8 SCC 273** is given to them.

6. Accordingly, we **dispose of** the Writ Petition no. 8049 of 2023 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**

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7. Insofar as Writ Petition No. 8003 of 2023 is of the opinion that the petitioner is aggrieved by non-adding of relevant sections at alleged by him in the F.I.R. or improper investigation than the petitioner has statutory remedy of filing a Complaint/ Application before the Judicial Magistrate, concerned, under Section 156 (3) Cr.P.C. as observed by the Hon'ble Supreme Court in the case of ***Sakiri Vasu Vs. State of U.P. and Others reported in 2008 (2) SCC 409***, an application can be filed to the Magistrate concerned who has very wide powers to direct and ensure a proper investigation. He can also monitor such investigation that the investigation is done properly.

8. Accordingly, the Writ Petition No. 8003 of 2023 is ***disposed of*** with a direction to the petitioner to approach the Magistrate concerned under Section 156 (3) Cr.P.C., who shall look into the matter and ensure that justice is done to the Complainant/ Informant.

Order Date :- 17.10.2023

Darpan Sharma