

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 7936 of 2023

Petitioner :- Smt. Rubi And Another

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

Counsel for Petitioner :- Arvind Kumar Gautam, Manoj Kumar

Counsel for Respondent :- G.A.

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Karunesh Singh Pawar, J.

1. Heard the learned counsel for the petitioners and the learned A.G.A. who appears for the State-respondents.

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

"(i) a writ, order or direction in the nature of Mandamus, commanding the opposite party no. 1 to 3 not to harass the Petitioners on the behest of opposite party no.4, in the interest of justice.

(ii) Issue a writ, order or direction in the nature of Mandamus, commanding the opposite party no. 1 to 3 to ensure protection of lives of the petitioner no.1 and the petitioner no.2."

3. It is the case of the petitioners that local police is harassing the petitioners at the behest of respondent no.4 as they married with each other against the wishes of the respondent no.4.

4. The Hon'ble Supreme Court in the case of Lalita Kumari Vs. Government of Uttar Pradesh and others, reported in (2014) 2 SCC 1, has observed

that a Police Officer cannot avoid his duty for registering an offence if in the application cognizable offence discloses and in case they avoid such responsibility, an action to be taken against the erring Officer under Section 166-A of the I.P.C. or Departmental Proceedings be initiated and such proceedings can be taken against erring Officer in not registering the FIR.

5. Learned A.G.A. has pointed out that the judgment rendered by the Division Bench of this Court in the case of Waseem Haider Vs. State of U.P. and others reported in (2021) 2 ADJ 86, to say that after considering the law laid down by the Hon'ble Supreme Court in the Lalita Kumari' case (supra), this Court expressed its opinion that the informant has statutory remedy under Section 156 (3) Cr.P.C. or under Section 200 of Cr.P.C. The Paragraph-45 of the said judgment is being quoted hereinbelow:-

"45. Before parting, the conclusion arrived at based on the above discussion and analysis is delineated below for ready reference and convenience :-

(1) Writ of mandamus to compel the police to perform its statutory duty under Section 154 Cr.P.C can be denied to the informant/victim for non-availing of alternative remedy under Sections 154(3), 156(3), 190 and 200 Cr.P.C., unless the four exceptions enumerated in decision of Apex Court in the the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors., (1998)

8 SCC 1, come to rescue of the informant / victim.

(2) The verdict of Apex Court in the case of Lalita Kumari Vs. Government of U.P. & Ors. reported in (2014) 2 SCC 1 does not pertain to issue of entitlement to writ of mandamus for compelling the police to perform statutory duty under Section 154 Cr.P.C without availing alternative remedy under Section 154(3), 156(3), 190 and 200 Cr.P.C.

(3) The informant/victim after furnishing first information regarding cognizable offence does not become functus officio for seeking writ of mandamus for compelling the police authorities to perform their statutory duty under Section 154 Cr.P.C in case the FIR is not lodged.

(4) The proposed accused against whom the first information of commission of cognizable offence is made, is not a necessary party to be impleaded in a petition under Article 226 of the Constitution of India seeking issuance of writ of mandamus to compel the police to perform their statutory duty under Section 154 Cr.P.C".

6. This Court is of the opinion that if the petitioners are aggrieved, by non-lodging of the F.I.R., they have appropriate remedy of filing a complaint under Section 156 (3) Cr.P.C. or under Section 200 of the Cr.P.C.

7. This writ petition stands disposed of.

Order Date :- 12.10.2023

Madhu