

Court No. - 12

Case :- APPLICATION U/S 482 No. - 9975 of 2023

Applicant :- Rishi Dhanuk @ Rishi Kumar

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Deptt. Home, Lucknow And Another

Counsel for Applicant :- Shiv Sharan Singh

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 Stated and perused the record.

2. The present application has been filed for quashing the impugned order dated 03.10.2023 passed by learned Additional District and Sessions Judge, Court No.4/Special Judge, E.C. Act, Lucknow; for issuing an order or direction in the nature of mandamus by commanding learned Additional District and Sessions Judge, Court No.4/Special Judge, E.C. Act, Lucknow to summon C.D.R. of Mobile No.7275429253 dialed on 1090 & 112, criminal history of deceased and their family members, and also C.D.R. of Mobile Nos. 6388792081, 9554023358, 8737046720 from the concerned authorities.

3. Learned counsel for the applicant submits that applicant has been falsely implicated in the present case. He further submits that inquest of body of deceased was also conducted. He further submits that informant was also one of the witness of the inquest but he only reported the contents of F.I.R. in question to Investigating Officer who conducted the inquest of body of deceased. He further submits that during the course of investigation, call detail reports of mobile Nos. 7275429253, 6388792081, 9554023358 were not collected by Investigating Officer and report from control room, in which, information was given by wife of applicant, was also not obtained. He further submits that charge-sheet was filed by Investigating Officer in the most mechanical manner, thereafter, application U/s 91 Cr.P.C. was moved by applicant for summoning the call detail reports of aforesaid mobile numbers from the service provider, criminal antecedents of the deceased and information recorded at 1090 helpline number & at number 112 but the said application was rejected by trial court in the most mechanical manner with the observation that application has been submitted only with the intention to delay the proceeding of trial and it was also observed that all these documents can be

called at the time of recording the statement U/s 313 Cr.P.C. as well as recording the defense evidences. It is, thus, submitted that indulgence of this Court is necessary.

4. Learned A.G.A. opposes the prayer of applicant and submits that call detail reports are preserved by service provider only for the period of one year and in the present case, the incident occurred on 28.01.2022. He further submits that application U/s 91 Cr.P.C. was submitted on 05.06.2023 and no application was moved before Investigating Officer or any senior officer for collecting the call detail reports as well as report of control room in time. He further submits that criminal antecedents can be obtained by applicant by moving application under Right to Information Act before D.C.R.B. He also submits that neither postmortem was done nor any statement was recorded U/s 161 Cr.P.C. by Investigating Officer and these documents are also not enclosed with the present petition/application, therefore, the present application is misconceived and is liable to be dismissed.

5. 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 from the record that only F.I.R., inquest report and application U/s 91 Cr.P.C. as well as impugned order have been annexed with the present application. It is well known that call details reports are preserved by serviced provider only for the period of one year except any order of court or Investigating Officer for preserving the same beyond the said period in exceptional circumstances. In the present case, there is no evidence that any application was moved by applicant to Investigating Officer for preserving the call detail reports as well as collecting the criminal antecedent or any other relevant document. In such circumstances, trial court has rightly rejected the said application.

6. In view of above, the present application is misconceived and, accordingly, stands **dismissed**.

Order Date :- 16.10.2023

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