

Court No. - 9

Case :- CRIMINAL MISC. WRIT PETITION No. - 8295 of 2023

Petitioner :- Pinki Yadav And Others

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

Counsel for Petitioner :- Rinku Verma,Aakash Srivastava

Counsel for Respondent :- G.A.

Hon'ble Rajan Roy,J.

Hon'ble Ajai Kumar Srivastava-I,J.

Heard.

This petition has been filed seeking the following reliefs :-

"(i) Issue a writ, Order or direction in the nature of Certiorari quashing the impugned First Information Report dated 20.09.2023 lodged by opposite party no. 4 at Police Station- Kotwali, District-Barabanki, in case crime no.1020 of 2023, under section 452, 323, 504, 506, 294, 324, 34 IPC.

(ii) Issue a writ, order or direction in the nature of Mandamus commanding the opposite parties not to arrest the petitioners on the basis of impugned First Information Report dated-20.09.2023 lodged by opposite party no. 4 at Police Station-Kotwali, District-Barabanki, in case crime no.- 1020 of 2023, under section 452, 323, 504, 506, 294, 324, 34 IPC.

(iii) Not to harass the petitioners in the name of investigation."

Learned counsel for the petitioners has submitted that the impugned F.I.R. is malafide and is actuated by the earlier F.I.R. lodged by the petitioners against the informant of the impugned F.I.R.

Learned A.G.A. says that all the offences alleged carry a sentence of seven or less than seven years, therefore, there is already a statutory protection under Section 41-A Cr.P.C. He also says that from the records and the petitioners' own F.I.R., it is evident that some incident took place on 18.09.2023, therefore, who was the offender would be seen during investigation and there is no reason for this Court to interfere in this matter.

We find substance in the submission of learned A.G.A. as

from the perusal of the F.I.R., it cannot be said that no cognizable offence is made out against the petitioners, at least at this stage and factual issues can be seen during the investigation. Therefore, we see no reason to interfere in this matter at this stage. However, as all the offences alleged carry a sentence of seven or less than seven years, therefore, the police is obliged to extend the benefit of the said provision contained in Section 41-A Cr.P.C. wherever attracted and no specific direction is required.

If during investigation any other Section is added, then the law will take its own course, meaning thereby, if the provisions contained in Section 41 or 41-A are not attracted to the said offence/section, then it shall be open for the police to proceed accordingly.

Accordingly, the writ petition is ***disposed of***.

Order Date :- 27.10.2023

A.Dewal