

Court No. - 12

Case :- APPLICATION U/S 482 No. - 10801 of 2023

Applicant :- Agahasan And Another

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

Counsel for Applicant :- Neeraj Tewari

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh,J.

1. Heard learned counsel for the applicant, learned AGA and perused the record.

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

"To quash the impugned order dated 20.03.2023 passed by Chief Judicial Magistrate Balrampur whereby learned trial court allowed the protest petition filed by the complainant /Respondent (Opposite party no.2) and issued process against the petitioners after rejecting Final report in case No.86 of 2022 under Section 302 Police Station- Pachpedwa District-Balrampur and summoning order dated 09.08.2023 passed by the Chief Judicial Magistrate District- Balrampur in Compliant Case No. 196/2023 Waseem Ahmad Vs. Agahasan & others contained in the Annexure No. 1 and 2 to this petition as well as entire proceedings arising out of a Complaint case 196/2023 under section -302 and 201 against the petitioners.

To stay the further proceeding of Complaint Case No. 196/2023 Waseem Ahmad Vs. Agahasan & others pending in the court of Chief Judicial Magistrate Balrampur, initiated in pursuance of the impugned order dated 20.03.2023 as well as summoning order dated 09.08.2023."

3. Learned counsel for the applicant submitted that the deceased is *Samadhi* of the applicant no.1, as the marriage of the daughter of the deceased was solemnized with his son. As she was being victimized therefore in the present case the FIR of case in question was lodged after one year from the date of alleged incident with the allegation that deceased was called by the applicant and thereafter by giving poison he was killed and body was thrown in his agricultural field. He also submitted the inquest as well as post-mortem of the body of deceased was conducted but the cause of death could not be ascertained and viscera was preserved but no any poison was found and thereafter application under Section 156(3) CrPC was filed and after detailed investigation final report was submitted by the investigating officer, thereafter protest application was filed by the private respondent, which was allowed by rejecting the final

report and the protest petition was treated as a complaint case and after recording the statements of interested witnesses under Section 200 and 202 CrPC, summoning order was passed by the learned trial Court for the offense under Sections 302 and 201 IPC. Learned counsel for the applicant submitted that the order dated 20.3.2023 by which the final report was rejected was cryptic order, therefore kind indulgence of this Court is necessary.

4. Learned AGA opposed the prayer of the applicant and submitted that the protest petition was allowed by rejecting the final report on 20.3.2023 and thereafter statement under Sections 200 and 202 CrPC were recorded and later on summoning order was passed in accordance with law so there is no illegality in the order passed by the learned trial Court. He further submitted that all the defense of the applicant can be raised before the competent Court at the appropriate stage, therefore, petition is mis-conceived and but he does not dispute this fact that the FIR of case in question was lodged after one year from the alleged date of incident and cause of death could not be ascertained by the Doctors as well as the experts of the FSL.

5. Considering the submissions of the rival parties and going through the content of the petition as well as other relevant documents, it is evident from the record that body of the deceased was found on 23.04.2021 in the agricultural field of the applicant situated in his village and thereafter inquest as well as post-mortem was conducted but the cause of death could not be ascertained but in the post-mortem report injury was found on the head of the deceased. It is also evident that the applicants are the resident of village Bijuwa Khurd and the body of the deceased was found in the village Bijuwa Khurd. All these facts were not investigated by the investigating officer and therefore this Court is of the view, learned court below has rightly rejected the final report. Considering the above, the present petition is devoid of merit and is **dismissed** accordingly.

6. However, it is open to the petitioners to submit application before the trial Court for further investigation and in case any such application is filed within three weeks from today before the trial court then the same shall be considered and decided by means of a reasoned and speaking order and on the strength of decision of the Hon'ble Supreme Court.

Order Date :- 3.11.2023

Vipul