Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 8678 of 2023

Petitioner :- Rajiv Kumar
Respondent :- State Of U.P. Thru. Prin. Secy. Home Civil Sectt. Lko And Others
Counsel for Petitioner :- Awadhesh Kumar Tiwari
Counsel for Respondent :- G.A.

Hon'ble Mrs. Sangeeta Chandra,J.
Hon'ble Narendra Kumar Johari,J.

Heard learned counsel for the petitioner, learned A.G.A. for the State/respondents Nos.1 to 3 and perused the record.

The present writ petition has been filed by the petitioner with the following main prayers :

"(i). issue a writ order or direction in the nature of mandamus commanding the police authorities to register the First Information Report in respect of the incident as narrated in the Annexure No.5 to the writ petition and investigate the matter properly.

(ii). issue a writ order or direction in the nature of mandamus commanding the police authorities to ensure the registration of the First Information Report against the opposite parties No. 4 and prosecute him in terms of Indian Penal Code."

It has been submitted by learned counsel for the petitioners that petitioner moved an application to the S.H.O., Police Station Kotwali Deva, District Barabanki to register an F.I.R. against the younger brother of the petitioner for threatening the petitioner for dire consequences relating the dispute of some immovable property. But the said application has not been heard and no F.I.R. has been registered. The petitioners also made a representation/application to the Superintendent of Police, Barabanki for lodging the F.I.R. against the opposite party No.4, but no action has been taken.

Learned counsel for the petitioners states that in the case of

Lalita Kumari vs. Government of U.P. and others; (2014) 2 SCC 1, Hon'ble Supreme Court has observed that where a cognizable offence is made out in an application/representation by any person, then the respondents/police authorities are duty bound to register the F.I.R. However, no F.I.R. has been registered till date in the case of the petitioner.

Learned A.G.A., on the other hand, has pointed out that a Division Bench of this Court in the case of ***Waseem Haider Vs. State of U.P. and others, Misc. Bench No.24492 of 2020: 2021 ADJ 86***, wherein the Division Bench after considering the observation made by the Supreme Court in the case of Lalita Kumari vs. Government of U.P. and others has observed in paragraph 45 that the informant/victim has remedy under Section 156 (3) Cr.P.C. and writ petitions should ordinarily not be filed for seeking a direction in the nature of mandamus to perform the statutory duty under Section 154 Cr.P.C. This court has perused the paragraph 45 of the judgment as cited by the learned A.G.A. Shri S.N. Tilhari. Paragraph 45 of the judgment in ***Waseem Haider Vs. State of U.P. and others*** (supra) is quoted herein below:-

"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."

This writ petition is **disposed of** with a direction to the petitioner to approach the competent court by filing an application under Sections 156 (3) Cr.P.C., if he is so aggrieved by any action on the part of respondents.

Order Date :- 9.11.2023
ML/-

Digitally signed by :-
MUNNA LAL
High Court of Judicature at Allahabad,
Lucknow Bench