

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 9123 of 2023

Petitioner :- Chandra Prakash

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

Counsel for Petitioner :- Mohammad Aslam Beg

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 8 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 thereby commanding the opposite party no.2 to 6 to conduct inquiry against the opposite party No. 9 to 17 and lodged First Information Report and conduct investigation in fair and proper manner contained in **Annexure No.1** to this petition.*

(ii). To direct the opposite party no.5 to lodge First Information Report against the opposite party No.9 to 17 and conduct investigation contained in Annexure No.1 to this petition."

It has been submitted by learned counsel for the petitioner that petitioner is having ancestral property in Khata No. 82, Gata No.3640, area 0-105H, 124 Khata Total 12 Gata and 2-294 No.124 Gata No. 1050 area 0-290 H, Gata No. 3621 area 0-220 H situated in Bhatpur Tahsil Sandila District Hardoi. It has been submitted by learned counsel for the petitioner that on the basis of forged and fabricated documents, names of the respondent Nos. 12 and 13 have been entered in the revenue records. After having knowledge of the said forged entries, cousin brother of the petitioner moved an application before the opposite party No.8, Settlement Officer, Consolidation, District Hardoi.

Petitioner has also filed Case No.729 of 2023 before the Opposite Party No.8 challenging the order dated 10.04.2023. The opposite parties Nos. 13 to 17 are selling out the property in dispute and creating third party interest. Petitioner tried to lodge the First Information Report but the S.H.O., Police Station -Sandila, District Hardoi has not lodged the F.I.R.

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 petitioners.

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 aggrieved by any action on the part of respondents.

Order Date :- 30.11.2023

ML/-