

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 9126 of 2023

Petitioner :- Sheshendra Singh

Respondent :- State Of U.P. Thru. Prin. Secy. Home, Lucknow And Others

Counsel for Petitioner :- Umesh Chandra

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 petitioners with the following main prayers :

*"(I). A writ, order or direction in the nature of mandamus commanding Opposite Party No.2 to take decision on Application dated 16.11.2023 in the light of law laid down by Constitution bench of Hon'ble Supreme Court in Case of "**Lalita Kumari Vs. Govt. of U.P. & Others** reported in MANU/SC/1166/2013" read with **Government Order No.700P/Chha:-Pu-3-2017-06P/12TC, Lucknow dated 19th June, 2017**, within specified time frame as contained in **Annexure No.11 and 12** to the writ petition.*

*(II). A writ, order or direction in the nature of mandamus commanding Opposite Party No.1 to take departmental action against O.P. No. 2 and 3 for dereliction of duty by violating mandatory guidelines issued by Constitution Bench of Hon'ble Supreme Court in Case of "**Lalita Kumari Vs. Govt. of U.P. & Others** reported in MANU/SC/1166/2013" read with **Government Order No.700P/Chha:-Pu-3-2017-06P/12TC, Lucknow dated 19th June, 2017**, within specified time frame, in the interest of justice."*

It has been submitted by learned counsel for the petitioners that there is a dispute in between the petitioner and private

respondents with regard to the land Khata No. 496, Plot No.329/0.2990 Hectare and Khata 364, Plot No.336/0.4490 Hectare, situated in Mohalla Dariyapur, Pargana- Meeranpur, Tehsil and District Sultanpur. Written Statement has been filed by respondent No.4 but the respondent No.4 failed to prove his case and name of Deshraj has been entered in the revenue records. The respondent No.4 filed appeal before the Additional Commissioner (Judicial) Faizabad, and the same was allowed and the matter was remanded back to the trial court. However, the respondent No. 4 in order to grab the land hatched a conspiracy with the officials and staff of the court of Sub Divisional Magistrate Sadar, Sultanpur mutated his name in the revenue records and several sale deeds have been executed. The petitioner made several applications for lodging the F.I.R., 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 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/-