

Court No. - 13

Case :- MATTERS UNDER ARTICLE 227 No. - 6100 of 2023

Petitioner :- Constable Ram Lautan

Respondent :- State Of U.P. Thru. Addl. Chief Secy. /Prin. Secy. Home U.P. Lko. And 3 Others

Counsel for Petitioner :- Suyesh Pradhan

Counsel for Respondent :- G.A.

Hon'ble Karunesh Singh Pawar,J.

Heard learned counsel for the petitioner as well as learned AGA for respondent no. 1 to 3.

Notices to respondent no. 4 are dispensed with in view of the proposed order.

By this petition, the petitioner has challenged the impugned order dated 20.11.2023 passed by the learned CJM, Sitapur in Msc. Criminal Case No. 761/2023 (Rajmani Vs. Ram Lautan) by which the application filed by the complainant under Section 156(3) Cr.P.C. has been allowed.

Learned counsel for the petitioner submits that the petitioner is a public servant working in a police department as a police constable and therefore, before passing the impugned order, sanction for prosecuting the petitioner ought to have been obtained which has not been done in this case. In support of his submission, he has relied on the judgment of the Supreme Court in the case of "*Anil Kumar and others Vs. M.K. Aiyappa and another, (2013) 9 SCR 869*" wherein it has been held that against the public servant without prior sanction the magistrate cannot pass an order for lodging FIR and investigation.

Learned AGA on the other hand has opposed the petition submitting that perusal of the impugned order dated 20.11.2023 shows that mainly the allegation against the petitioner is of committing rape upon the complainant and therefore, in view of the explanation to sub Section (1) of Section 197 Cr.P.C., no prior sanction is required.

A perusal of the record as well as submission made by the parties, it appears that the submission of learned counsel for the State appears to have force. The allegation against the petitioner is that he has committed rape on the complainant and the explanation to sub Section (1) of Section 197 Cr.P.C. clearly shows that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed

under section 376 IPC. The said explanation is extracted below:-

"[Explanation.--For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, 4[section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB] or section 509 of the Indian Penal Code (45 of 1860).]"

Hence, in view of the aforesaid explanation, I am of the view that no sanction is required in case of the petitioner who is also a police constable for the alleged offence of rape. There is no illegality in the impugned order.

The petition lacks merits and is accordingly ***dismissed***.

Order Date :- 5.12.2023

R.C.