

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 9421 of 2023

Petitioner :- Dhruva Kumar Pandey And Another

Respondent :- State Of U.P. Thru. Secy. Deptt. Of Home Civil Sectr. Lko. And Others

Counsel for Petitioner :- Gouri Shanker Singh

Counsel for Respondent :- G.A.

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Narendra Kumar Johari,J.

(1) Heard the learned counsel for the petitioners, learned A.G.A. who appears for the State-respondents and Sri Dharmendra Kumar Pandey, Advocate who has filed his vakalatnama on behalf of the opposite party no. 7, which is taken on record.

(2) This petition has been filed by the petitioner for the following main prayer:-

"i. Issue a writ, order or direction in the nature of mandamus directing the respondent no.2 to lodge appropriate criminal case/First Information Report against respondent no.3, 4, 5, 6, 7 and take it to the logical end and punish them accordingly for committing theft of petitioners property by demolishing petitioners 6 feet high wall situated at plot no. 391, Chopra Gali (Khairabad) paragna-Meeranpur, Tahsil-Sadar, District-Sultanpur, and for forcefully grabbing key of his gate."

(3) It has been submitted by learned counsel for the petitioner that the petitioner tried to lodge an F.I.R. in Police Station-Kotwali Nagar, District- Sultanpur and also given an application in this regard to the Superintendent of Police concerned on 27.09.2023. However, the F.I.R. was not lodged. Learned counsel for the petitioners also prayed for benefit of the judgement rendered by the Supreme Court in the case of ***Lalita Kumari Vs. Government of U.P. & Ors.*** reported in ***(2014) 2 SCC 1.***

(4) Learned A.G.A. has pointed out that the judgment rendered by the Division Bench of this Court in the case of ***Waseem Haider Vs. State of U.P. and others reported in (2021) 2 ADJ 86,*** to say that after considering the law laid down by the Hon'ble Supreme Court in the ***Lalita Kumari'*** case (supra), this

Court expressed its opinion that the informant has statutory remedy under Section 156 (3) Cr.P.C. or under Section 200 of Cr.P.C. The Paragraph-45 of the said judgment is being quoted hereinbelow:-

"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".

(5) This Court is of the opinion that if the petitioner is aggrieved by non-lodging of the FIR, therefore, he has appropriate remedy of filing a complaint under Section 156 (3) Cr.P.C. or under Section 200 of the Cr.P.C.

*(6) This writ petition stands **disposed of**.*

Order Date :- 13.12.2023

Darpan Sharma