

Court No. - 16

Case :- CRIMINAL MISC. WRIT PETITION No. - 9232 of 2021

Petitioner :- Ajai Kumar Saxena

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

Counsel for Petitioner :- Amitabh Tripathi

Counsel for Respondent :- G.A., Pankaj Shukla

Hon'ble Shamim Ahmed, J.

Heard Shri Amitabh Tripathi, learned Counsel for the petitioner, Shri Pankaj Shukla, learned Counsel for respondent No.2, Shri Veer Bhan Singh, learned A.G.A-I for the State and perused the material placed on record.

The present writ petition has been filed on behalf of the petitioner, namely-Ajai Kumar Saxena praying for following main reliefs:-

"a. issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 13.02.2020 passed by learned District and Session's Judge, Raebareli in Crl. Misc. Case No.120/2019, under Section 5 of the Indian Limitation Act; Ajai Kumar Saxena vs. State of U.P. and Another.

b. issue a writ, order or direction in the nature of mandamus commanding the opposite party No.1 not to arrest the petitioner in view of Non-Bailable Warrant issued against him by means of order dated 12.03.2021 passed in Crl. Misc. Case No.06/2019, Smt. Divya Saxena vs. Ajai Kumar Saxena pending in the court of learned J.M.-1, Court No.17, Raebareli."

A Coordinate Bench of this Court vide order dated 22.11.2021 had passed the following order:-

"The case is called out.

Learned counsel for the petitioner has moved out of station slip, which is strongly protested by learned counsel for the opposite party no.2, Sri Pankaj Shukla, Advocate on the ground that earlier also adjournment was moved. He further informs that counter affidavit in the matter has already been filed by him, thereafter the case is being lingered. Learned A.G.A. for the State Ms. Madhulika Sircar, Advocate is also present in the Court.

On perusal of the record of the present writ petition, it is found that the petition under Article 226 of the Constitution of India is directed for relief of certiorari against the order of learned District and

Session Judge, Raibareli dated 13.02.2020 passed in Criminal Misc. Case No.120/2019, under Section 5 of the Indian Limitation Act. The petition prima facie is not maintainable under Article 226 of the Constitution of India because in view of the Hon'ble Supreme Court decision in Radhey Shyam & Anr. Vs. Chhabi Nath & Ors. reported in (2015) 5 SCC 423, certiorari cannot be issued against the judicial order passed by the Court subordinate to the High Court. The proper remedy is under Article 227 of the Constitution of India.

An opportunity is needed to be given to meet out the maintainability of the petition under Article 226 of the Constitution of India in the next week.

List on 30.11.2021.

If the learned counsel for the petitioner remains absent on the next date fixed, the petition shall be decided on the ground of maintainability alone."

Thus, in view of the order dated 22.11.2021 (quoted above), learned Counsel for the petitioner submits that he does not want to press this petition on merits and wants to withdraw the same with liberty to file a fresh petition as per the remedy available to the petitioner, in accordance with law.

Learned Counsel for the respondent No.2 and learned A.G.A-I has no objection to the prayer made by learned Counsel for the petitioner.

In view thereof, the present petition is hereby **dismissed** as withdrawn with liberty as prayed by learned Counsel for the petitioner.

Interim order, if any, stands vacated.

Office is directed to return all the certified copies to learned Counsel for the petitioner after keeping a photostat copy of the same on record.

Order Date :- 31.7.2024

Piyush/-