

Court No. - 16

Case :- CRIMINAL MISC. WRIT PETITION No. - 5401 of 2024

Petitioner :- Ramchandra Jaiswal

Respondent :- State Of U.P. Thru. Secy. Home Deptt. Lko And 2 Others

Counsel for Petitioner :- Shitla Prasad Tripathi

Counsel for Respondent :- G.A.

Hon'ble Shamim Ahmed,J.

Heard Shri Shitla Prasad Tripathi, learned counsel for the petitioner, Shri Ashok Kumar Singh, learned A.G.A.-I for the State and perused the record.

The instant writ petition has been filed seeking following main reliefs:-

"I. Issue a writ, order or direction in the nature of certiorari to quash the impugned judgment and order dated 02.07.2024 passed by learned Additional District and Session Judge / F.T.C. Second, Faizabad in Criminal Revision No.06/2021, C.N.R. No. UPFZ010001412021 (Ram Chandra Jaiswal Vs. State of U.P.) as well as to quash the impugned order dated 03.11.2020 passed by the learned Civil Judge (J.D.)-III / J.M., Faizabad in Criminal Case No.591/2009, Charge Sheet No.100/2006, Crime No.520/2006 (State Vs. Ram Chandra Jaiswal), under Section 419, 420, 465, 467, 468, 471 I.P.C., Police Station Inayatnagar, Faizabad, contained in annexure no.1 and 2 to this writ petition, in the interest of justice.

II. Issue a writ, order or direction in the nature of certiorari to quash the impugned cognizance order dated 08.07.2008 for want of sanction under Section 197 Cr.P.C. which is ex facie bad for want of sanction issued by the learned Additional Chief Judicial Magistrate-III, Faizabad being Criminal Case No.591/2009, Charge Sheet No.100/2006, Crime No.520/2006 (State Vs. Ram Chandra Jaiswal), under Sections 419, 420, 465, 467, 468, 471 I.P.C., Police Station Inayatnagar District Faizabad contained in annexure no.3 to this writ petition in the interest of justice.

III. Issue a writ, order or direction in the nature of certiorari to quash the entire criminal proceedings in pursuance thereof, pending in the court of Civil Judge (J.D.)-III / J.M., Faizabad in Criminal Case No.591 of 2009, Charge Sheet No.100/2006, Crime No.520/2006 (State Vs. Ram Chandra Jaiswal), under Sections 419, 420, 465, 467, 468, 471 I.P.C., Police Station Inayatnagar, Faizabad."

Learned counsel for the petitioner submits that the instant F.I.R. was lodged against the petitioner, who was a Government Servant with the allegation that he has manipulated some affairs

and has committed fraud and cheating by indulging himself in preparing some orders in his own favour from the office of Deputy Director Consolidation, Faizabad. Thereafter, the investigating officer filed charge sheet against the petitioner without necessary sanction for prosecution, whereas the sanction as provided under Section 197 Cr.P.C. is mandatory, thus, the order passed by learned trial court by which cognizance was taken is illegal for want of sanction.

He further submits that the petitioner has moved an application dated 10.11.2014 in pursuance to the observation made by the Hon'ble High Court while passing the order dated 10.11.2010 in Criminal Misc. Case No.4363 of 2010 to raise the issue of lack of sanction under Section 197 Cr.P.C., however, the same was dismissed vide order dated 03.11.2020.

He further submits that aggrieved with the aforesaid order dated 03.11.2020, the petitioner preferred Criminal Revision NO.06/2021, C.N.R. No. UPFZ01000141201, however, the same was also dismissed by learned Additional District and Session Judge / F.T.C. Second, Faizabad vide order dated 02.07.2024.

He further submits that both the impugned orders are bad in the eyes of law as they have been passed without considering the evidence on record as well as without obtaining the sanction for prosecution as prescribed under Section 197 Cr.P.C., thus, they may be quashed by this Hon'ble Court in the interest of justice.

On the other hand, learned A.G.A.-I for the State submits that prima facie offence is made out against the petitioner, thus, the impugned orders have rightly been passed, which does not require any interference by this Court. He further submits that the petitioner has already challenged the charge sheet as well as the impugned cognizance order dated 08.07.2008 passed by the learned Additional Chief Judicial Magistrate-III, Faizabad before this Hon'ble Court in Criminal Misc. Case No.4363 of 2010, which was disposed of by co-ordinate Bench of this Court vide order dated 10.11.2010. Thus, he submits that the instant petition be dismissed as the relief sought in this petition cannot be granted to the petitioner.

After some argument, learned counsel for the petitioner confined his prayer to the extent that a positive direction may be given to learned trial court that if a bail application is moved before it by the petitioner, the same may be considered and decided expeditiously in accordance with law.

Learned A.G.A.-I for the State has no objection to the prayer

made by learned Counsel for the petitioner and submit that a positive direction may be issued to the learned trial court to consider and decide the bail application, if moved before it by the petitioner, expeditiously in accordance with law after hearing the public prosecutor.

From perusal of the materials on record and looking into the facts of the case and after considering the arguments made at the bar, it does not appear that no offence has been made out against the petitioner. Even the petitioner has also challenged the charge sheet as well as the impugned cognizance order dated 08.07.2008 passed by the learned Additional Chief Judicial Magistrate-III, Faizabad before this Hon'ble Court in Criminal Misc. Case No.4363 of 2010, which was disposed of by co-ordinate Bench of this Court vide order dated 10.11.2010. Further, the impugned orders have rightly been passed by the learned trial court, which does not warrants any interference as both the orders are legal and they do not suffer from any perversity or infirmity. As such, the relief sought cannot be granted to the petitioner.

However, in view of the submissions made by learned Counsel for the parties, if the petitioner appears and surrenders before the trial court and applies for bail within four weeks' from today, the prayer for bail shall be considered and decided expeditiously by the trial court in accordance with law after hearing the Public Prosecutor.

With the aforesaid observations, this petition is finally **disposed of.**

Order Date :- 30.7.2024
Saurabh