

Neutral Citation No. - 2024:AHC-LKO:55605

**Court No. - 13**

**Case :- APPLICATION U/S 482 No. - 7081 of 2024**

**Applicant :- Smt. Archana Devi**

**Opposite Party :- State Of U.P. Thru. Prin. Secy. Home U.P.  
Lko. And 12 Others**

**Counsel for Applicant :- Sudhakar Mishra,Vivek Tiwari**

**Counsel for Opposite Party :- G.A.**

**Hon'ble Saurabh Lavania,J.**

Heard learned counsel for the applicant and learned AGA appearing for the State and perused the record.

Present application has been filed by the applicant to quash the impugned order dated 03.06.2024 passed by the learned Sessions Judge (in short "Revisional Court"), Sultanpur in Criminal Revision No. 23 of 2024 (Smt. Archana Devi vs. State of U.P. and Others) and the order dated 13.04.2023 passed by the A.C.J.M. (in short "Magistrate"), Room No. 19, Sultanpur in Case Crime No. 129 of 2020 under Section 397 Cr.P.C. in S.T. No. 1114 of 2023, arising out of Case Crime No. 129 of 2020.

The submission of learned counsel for the applicant, in nutshell, is to the effect that an FIR No. 0129 of 2020 under Section 147, 148, 149, 307, 504, 435, 395, 188, 269 and Section 3 of Epidemic Diseases Act, 1897 was lodged at P.S.- Baldirai, District-Sultanpur. Thereafter, Investigating Officer (in short "I.O.") after completion of investigation submitted the charge sheet upon which cognizance was taken by the court concerned on 13.04.2023.

Prior to taking cognizance on the charge sheet No. 01 an application was preferred by the applicant in terms of Section 173(8) Cr.P.C. praying therein to direct the I.O. to carry out further investigation. The trial Court upon due consideration of the facts of the case vide order dated 26.08.2021 allowed the said application and directed the I.O. to carry out further investigation. The order dated 26.08.2021 reads as under:-

*"The application for hearing before taking cognizance in the matter case crime No. 129/2020, U/s 147, 148, 149, 307, 504, 435, 395, 188, 269, I.P.C. and section 3 Epidemic Act, P/s Baldirai, District Sultanpur, presented called learned counsel of applicant/informant Archana Devi is present along with learned Assistant Prosecution officer (A.P.O).*

*The said application is presented by the applicant mainly stating that the Investigation in the above matter has not been done properly and thoroughly. The evidence and statement pertaining to injureds and crucial witnesses have not been taken down in the investigation. As such, prayer is made to direct further investigation in the said matter.*

*The said application is duly forwarded and submitted by the Ld. APO.*

*Heard and Perused the file and papers.*

*The file is at the stage of cognizance taking as chargesheet and accompanying papers and documents relating to investigation has been filed U/s 173 Criminal Procedure Code (Cr. P.C.) on perusal of chargesheet along with case diary details, it can be apparently seen that the investigation conducted in the above matter has not touched all aspects and fact..... including direct witnesses of the matter and those injured. Taking these circumstances into account in right of section 173(8) Cr. P.C. and being guided by judicial decision Hasan Bhai Vali Bhai Qureshi Vs State of Gujarat and others on 5th April 2004, Case No. Appeal (Crl) 421 of 2004, it seems apt and proper to send the matter for further investigation before taking cognizance. On above analysis and in interest of justice. It seems just to allow the application in the manner as shown below.*

*ORDER*

*The applicant's application in the above matter is allowed in the manner that said matter is being sent for further investigation, without any unnecessary delay, as per the provisions of law, to the concerned office is directed to make necessary compliance, accordingly."*

In compliance of the order dated 26.08.2021 the I.O. carried out further investigation and during further investigation statement of injured/witness namely Pradeep Kumar Singh, Amit Singh, Dilip, Amar Bahadur Yadav, Ankit, Kunwar Bahadur, Lachna and Jagdish were recorded. The medical report(s) of the injured(s) namely Pradeep Kumar Singh, Amit Singh, Dilip, Amar Bahadur Yadav, Ankit, Kunwar Bahadur, Lachna and Jagdish were also collected. Thereafter the same were placed on record alongwith the supplementary charge sheet.

The injury report(s) of injured Amar Bahadur and Kunwar Bahadur indicate that they suffered fracture in Shaft of Lt. Fibula and Shaft of Lt. Ulna, respectively.

In the supplementary charge sheet Section 307 IPC was not added and after submission of supplementary charge sheet the applicant again moved the application in terms of Section 173(8) Cr.P.C. praying therein for further investigation.

This application of the applicant was rejected by the Magistrate vide order dated 13.04.2023. The relevant portion of the order dated 13.04.2023 is extracted hereinunder:-

*"On perusal of the file it is seen and found that wide order dated 26.08.2021, passed by this Court on the Application of Informant Archana, the matter was*

*referred for further investigation without any unnecessary delay to conduct wholesome investigation taking into account the version of direct and injured witnesses, as well. This further investigation was ordered before taking cognisance of the said matter. After conducting further investigation, Supplementary Case Diary (SCD) has been filed by Police Station Baldirai. In the SCD the statements of injured/witnesses like Pradeep, Amit Singh, Dilip, Amar Bahadur, Ankit, Kunwar Bahadur are recorded. Statements of direct witnesses like Lachna Singh and Jagdish are also taken down in investigation. In the concluding portion of SCD Paper 10, it is stated that injured .....was not done in District Jail, Sultanpur and medical reports of said injured have been already included and mentioned in Case Diary, Medical Reports of said injured namely Pradeep Kumar Singh, Amar Bahadur, Ankit, Kunwar and Dilip are filed as part of previously filed Case Diary, along with other papers. On due perusal, it is seen that the said injury reports mention the object/weapon of alleged attack happens to be hard and blunt object' in the column of medical opinion. Reports doesn't mention the use of any sharp object or weapon. Further, after X-Ray, it is endorsed on the medical reports that none of the injured has suffered any head fracture. Two injured namely Amar Bahadur and Kunwar have suffered fracture in Shaft of Lt. Fibula and Shaft of Lt. Ulna, respectively. Apart from this, it is equally pertinent to mention over here that on perusal of statement of injured Amar Bahadur, on SCD 05, it is seen that he has not mentioned or stated about snatching of his mobile by Accuseds during the alleged incident as stated in F.I.R. by the Informant Archana.*

*Thus, from all these above-discussed facts and evidences gathered during course of further investigation, which was done in pursuance of the earlier existing investigation, it is seen that there are ample and sufficient grounds to take cognisance of the matter against the named Accuseds under the relevant Sections mentioned in chargesheet. There is no ground to alter any other Section as prayed by Informant in said Application. It is not out of place to mention over here that cognisance is not being taken of Section 188 I.P.C. and Section 3 Epidemic Act, 1879 as the information of the alleged offence is not received by means of written complaint filed by public servant.*

Being aggrieved, applicant preferred the Criminal Revision No. 23 of 2024 (Smt. Archana Devi vs. State of U.P. and Others) and the Revisional Court rejected/dismissed the said revision vide order dated 03.06.2024. The relevant portion of the order dated 03.06.2024 extracted hereinunder:-

"7. पत्रावली पर उपलब्ध प्रपत्रों के अवलोकन से यह पाया जाता है कि निगरानी/वादिनी मुकदमा द्वारा विपक्षी सं० 2 लगायत 13/अभियुक्तगण के विरुद्ध थाना-बल्दीराय जनपद-सुलतानपुर में मु०अ०सं०-129/2020 अंतर्गत धारा-147, 148, 149, 307, 504, 435, 395, 188, 269 भा०दं०सं० व धारा-3 महामारी अधिनियम पंजीकृत कराया गया, जिसमें विवेचक द्वारा विवेचनोपरान्त विपक्षी सं० 2 लगायत 13/अभियुक्तगण के विरुद्ध साक्ष्य संग्रहित करते हुए उनके विरुद्ध आरोप पत्र अंतर्गत धारा-147, 148, 149, 323, 325, 504, 506, 188, 269 भा०दं०सं० व धारा-3 महामारी अधिनियम न्यायालय में प्रेषित किया गया। संज्ञान के स्तर पर निगरानीकर्त्री/वादिनी मुकदमा द्वारा मजिस्ट्रेट न्यायालय के समक्ष, विवेचनाधिकारी की विवेचना से सन्तुष्ट न होकर अग्रिम विवेचना कराये जाने हेतु प्रार्थना पत्र प्रस्तुत किया गया, जिस पर सुनवाई करते हुए विद्वान मजिस्ट्रेट न्यायालय द्वारा दि० 26.08.2021 को निगरानीकर्त्री/वादिनी मुकदमा का उपरोक्त प्रार्थना पत्र स्वीकार किया गया तथा प्रकरण में बिना किसी विलम्ब के अग्रिम विवेचना कराये जाने हेतु आदेशित किया गया। उक्त आदेश दिनांकित 26.08.2021 के अनुपालन में पुलिस के विवेचनाधिकारी द्वारा प्रकरण की अग्रिम विवेचना करते हुए विपक्षी सं० 2 लगायत 13/अभियुक्तगण के विरुद्ध आरोप पत्र अंतर्गत धारा-147, 148, 149, 323, 325, 504, 506, 188, 269 भा०दं०सं० व धारा-3 महामारी अधिनियम मय परक केस डायरी न्यायालय में प्रेषित किया गया। पुनः संज्ञान के स्तर पर निगरानीकर्त्री/वादिनी मुकदमा द्वारा प्रार्थना पत्र वास्ते कराये जाने अग्रिम विवेचना मजिस्ट्रेट न्यायालय के समक्ष प्रस्तुत किया गया, जिस पर सुनवाई करते हुए विद्वान मजिस्ट्रेट न्यायालय द्वारा उक्त प्रार्थना पत्र वास्ते कराये जाने अग्रिम विवेचना को निरस्त करते हुए विपक्षी सं० 2 लगायत 13/अभियुक्तगण जयकरन, महन्थ, सुभाष, रोहित, प्रमोद, दान सिंह, जमुना, मनोज, बजरंगी, अंकित, महेश पुत्र इन्दर, महेश पुत्र आनन्द प्रकाश के विरुद्ध धारा- 147, 148, 148, 323, 325, 504, 506, 269 भा०दं०सं० के अंतर्गत प्रसंज्ञान लिया है।

8. पत्रावली पर उपलब्ध पूरक केस डायरी के अवलोकन से यह पाया जाता है कि मजिस्ट्रेट न्यायालय द्वारा पूर्व में पारित आदेश दिनांकित 26.08.2021 के अनुपालन में अग्रिम विवेचना के दौरान विवेचनाधिकारी द्वारा चोटहिल साक्षीगण प्रदीप, अमित सिंह, दिलीप, अमर बहादुर, अंकित, कुंवर बहादुर तथा साक्षीगण लचना सिंह व जगदीश के बयान दर्ज किये गये। पत्रावली पर उपलब्ध चोटहिलों की आघात आख्याओं में चिकित्सक द्वारा अपनी राय में चोटों को धारदार हथियार अथवा किसी अन्य घातक हथियार से आना नहीं बताया गया है, बल्कि चोटों को कुन्दालय से आना बताया गया है। इसी प्रकार एक्स-रे रिपोर्ट में भी सिर जैसे मर्म स्थल में किसी प्रकार की कोई टूट-फूट/फ्रैक्चर पाये जाने का उल्लेख नहीं किया गया है। उपरोक्त तथ्यों के आधार पर ही विद्वान मजिस्ट्रेट न्यायालय द्वारा

विपक्षी सं० 2 लगायत 13/अभियुक्तगण जयकरन, महन्थ, सुभाष, रोहित, प्रमोद, दान सिंह, जमुना, मनोज, बजरंगी, अंकित, महेश पुत्र इन्दर, महेश पुत्र आनन्द प्रकाश के विरुद्ध धारा-147, 148, 148, 323, 325, 504, 506, 269 भा०द०सं० के अंतर्गत संज्ञान लिया है।

9. विधि का यह सुस्थापित सिद्धान्त है कि मजिस्ट्रेट न्यायालय, पुलिस द्वारा दाखिल किये गये आरोप पत्र अथवा अंतिम आख्या से बाध्य नहीं है। यदि मजिस्ट्रेट न्यायालय को यह प्रतीत होता है कि जिन अपराध के लिए आरोप पत्र किसी अभियुक्त के विरुद्ध दाखिल नहीं किया गया है एवं पत्रावली पर उपलब्ध साक्ष्यों एवं सामग्रियों से प्रथम दृष्टया उक्त अपराध सृजित होना पाया जाता है, ऐसी दशा में उन अपराधों के बाबत न्यायालय द्वारा आरोप विरचन के स्तर पर अथवा विचारण के किसी भी स्तर पर आरोप विरचित किया जा सकता है एवं विचारण न्यायालय ऐसा करने के लिये स्वतंत्र है।

10. उपरोक्त के अतिरिक्त यदि निगरानीकर्त्री के पास किसी प्रकार का कोई साक्ष्य अपने कथनों के समर्थन में उपलब्ध है तो निगरानीकर्त्री निश्चय ही उक्त साक्ष्य को न्यायालय में उचित स्तर पर प्रस्तुत कर सकती है अथवा आरोप विरचन के समय भी उक्त बिन्दु पर सक्षम न्यायालय के समक्ष अपना पक्ष प्रस्तुत कर सकती है। मजिस्ट्रेट न्यायालय द्वारा पारित किये गये आक्षेपित आदेश, जिसके द्वारा मजिस्ट्रेट न्यायालय ने पत्रावली पर उपलब्ध साक्ष्यों/सामग्रियों के आधार पर निगरानीकर्त्री/वादिनी मुकदमा के प्रार्थना पत्र वास्ते कराये जाने अग्रिम विवेचना को निरस्त करते हुए विपक्षी सं० 2 लगायत 13/अभियुक्तगण जयकरन, महन्थ, सुभाष, रोहित, प्रमोद, दान सिंह, जमुना, मनोज, बजरंगी, अंकित, महेश पुत्र इन्दर, महेश पुत्र आनन्द प्रकाश के विरुद्ध धारा-147, 148, 148, 323, 325, 504, 506, 269 भा०द०सं० के अंतर्गत प्रसंज्ञान लिया है, मैं किसी प्रकार की विधिक त्रुटि नहीं पायी जाती है।

11. इस प्रकार उपरोक्त विवेचना के आधार पर मैं इस निष्कर्ष पर पहुँचता हूँ कि विद्वान मजिस्ट्रेट न्यायालय द्वारा पारित आक्षेपित आदेश विधिसम्मत है तथा उक्त आदेश में किसी प्रकार के हस्तक्षेप की कोई आवश्यकता नहीं है। निगरानीकर्त्री के विद्वान अधिवक्ता द्वारा प्रस्तुत तर्क ग्राह्य योग्य नहीं हैं तथा विपक्षीगण के तर्क ग्राह्य योग्य हैं। तदनुसार निगरानीकर्त्री की ओर से प्रस्तुत निगरानी निरस्त किये जाने योग्य है।

#### **आदेश**

निगरानीकर्त्री की ओर से प्रस्तुत दाण्डिक निगरानी निरस्त की जाती है। इस निर्णय की प्रति सम्बन्धित विचारण न्यायालय को प्रेषित की जाए। पत्रावली नियमानुसार संचित अभिलेखागार हो।"

In the aforesaid background of the case, present application has been filed.

Impeaching the impugned order(s), it is stated by the learned counsel for the applicant that in the FIR specific

allegations were levelled to attract offence under Section 307 IPC and to that effect Pradeep Kumar Singh sustained injury and despite the same, the charge sheet was not filed under Section 307 IPC and at relevant point of time certain documents including medical reports were not obtained from the concerned hospital and therefore the application under Section 173(8) Cr.P.C. was preferred which was allowed vide order dated 26.08.2021 and in subsequent investigation in compliance of the order of the trial Court dated 26.08.2021 the I.O. has not collected material evidence and as such further investigation is required in the matter and being so both the orders are liable to be interfered with by this Court.

Learned AGA Sri Niramal Kumar Pandey stated that the I.O. has already concluded entire investigation by reducing the statement of witnesses in writing including the statements of injured witnesses and collecting the material/evidence and the same have been placed on record of the court concerned and as such at this stage no further investigation is required in the matter. Prayer is to dismiss the application.

Considered the aforesaid and perused the record.

The subject matter in this case relates to re-investigation/further investigation, as prayed, in the instant application, and accordingly, it would be apt to refer expression "investigation" which is defined in Section 2(h) of Cr.P.C.:-

*"investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a*

*Magistrate) who is authorised by a Magistrate in this behalf;"*

Regarding expression "*investigation*", it would be appropriate to refer para(s) 53 to 55 of the judgment passed in the case of ***Kailash Vijayvargiya v. Rajlakshmi Chaudhuri, 2023 SCC OnLine SC 569***, which are extracted hereinunder:-

*"53. The Code vide Chapter XII, ranging from Section 154 to Section 176, deals with information to the Police and their power to investigate. Section 154 deals with the information relating to the commission of a cognizable offence and fiats the procedure to be adopted when prima facie commission of a cognizable offence is made out. Section 156 authorises a police officer in-charge of a Police station to investigate any cognizable offence without the order of a Magistrate. Sub-section (3) of Section 156 provides for any Magistrate empowered under Section 190 to order an investigation as mentioned in Section 156(1). In cases where a cognizable offence is suspected to have been committed, the officer in-charge of the Police station, after sending a report to the Magistrate empowered to take cognizance of such offence, is entitled under Section 157 to investigate the facts and circumstances of the case and also to take steps for discovery and arrest of the offender. Clauses (a) and (b) of the proviso to sub-section (1) to Section 157 give discretion to the officer in-charge not to investigate a case, when information of such offence is given against any person by name and the case is not of serious nature; or when it appears to the officer in-charge of the Police station that there is no sufficient ground for entering the investigation. In each of the cases mentioned in clauses (a) and (b) to the proviso to sub-section (1) to Section 157, the officer in-charge of the Police station has to file a report giving reasons for not complying with the requirements of sub-section (1) and in a case covered by clause (b) to the proviso, also notify the informant that he will not investigate the case or cause it to be investigated. Section 159 gives power to a Magistrate, on receiving such report of the officer in-charge, to either direct an investigation or if he thinks fit, proceed to hold a preliminary inquiry himself or through a Magistrate subordinate to him, or otherwise dispose of the case in the manner provided by the Code.*

**54.** Sections 160 to 164 deal with the power of the Police to require attendance of witnesses, examination of witnesses, use of such statements in evidence, inducement for recording statement and recording of statements. Section 165 deals with the power of a Police officer to conduct search during investigation in the circumstances mentioned therein.

**55.** The power under the Code to investigate generally consists of following steps : (a) proceeding to the spot; (b) ascertainment of facts and circumstances of the case; (c) discovery and arrest of the suspected offender; (d) collection of evidence relating to commission of offence, which may consist of examination of various persons, including the person accused, and reduction of the statement into writing if the officer thinks fit; (e) the search of places of seizure of things considered necessary for investigation and to be produced for trial; and (f) formation of opinion as to whether on the material collected there is a case to place the accused before the Magistrate for trial and if so, taking the necessary steps by filing a chargesheet under Section 173."

In the instant case, from the documents placed on record including the orders impugned, it is apparent that I.O. has collected all the material/evidence which is prime concern of I.O. viz. reducing the statement(s) of witnesses of prosecution including injured/witnesses namely Pradeep Kumar Singh, Amit Singh, Dilip, Amar Bahadur Yadav, Ankit, Kunwar Bahadur, Lachna and Jagdish and also the medical report(s) of all the injured persons.

In view of aforesaid as also the law on the issue this Court is of the view that the I.O. has completed the investigation and accordingly finds no force in the present application. It is therefore ***dismissed.***

**Order Date :- 12.8.2024**

Vinay/-