

Reserved

Court No. - 13

Case :- APPLICATION U/S 482 No. - 9225 of 2024

Applicant :- Sunita Agarwal

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko And Another

Counsel for Applicant :- Anuj Taandon

Counsel for Opposite Party :- G.A.,Gaurav Mehrotra,Nadeem Murtaza

Hon'ble Rajeev Singh,J.

C.M. Application No. 1 of 2024 (Application for Correction).

1. Heard on the application for correction of the order dated 02.12.2024.
2. In view of the submission made by learned counsel for the applicant, following correction is being incorporated in the order dated 02.12.2024.
3. In fourth line of fourth paragraph, "*applicant*" shall be read as "*private respondent*"
4. Remaining portion of the order dated 02.12.2024 shall remain intact.
5. Correction application is accordingly *allowed*.

Order on Application U/S 482 CrPC

1. Heard Shri Anuj Taandon, learned counsel for the applicant, Shri Gaurav Mehtrotra, learned counsel for the private respondent, Shri Rao Narendra Singh, learned AGA for the State, Shri Vikas Kumar Jaiswal, ACP, Hazratganj, Lucknow as well as Shri Ved Prakash Tripathi, Joint Director Prosecution, Lucknow and perused the record.

2. The present application has been filed with the prayer to allow the application filed under Section 528 Bhartiya Nagrik Suraksha Sanita 2024 (BNSS) corresponding to Section 482 Cr.P.C. and set aside the impugned order dated 02.07.2024 passed by Learned Court of Chief Judicial Magistrate, Lucknow in Criminal Case No.4618/2019, Case Crime No.709/2017 under Sections 354(A), 406, 504, 506 of IPC, P.S.- Hazratganj, District- Lucknow.

3. Learned counsel for the applicant has submitted that private respondent, namely, Susheel Ansal, son of late Chiranjeevi Chairman of Ansal Properties and Infrastructure Ltd and Director, Ansal API Ltd. Lucknow, resident of 26, Firoz Shah Road, Barakhamba, New Delhi and his associates had taken ₹3,10,03,382/- (Three Crore Ten Lakh Three Thousand Three Hundred Eighty Two Rupees) from the applicant in lieu of purchase of property in question but the property was not being provided to the applicant and her husband. He has further submitted that on 19.08.2017 at about 12:30 PM, applicant was called in the office of private respondent and when she visited the office, private respondent abused her and tried to outrage her modesty. The associates of private respondent forcibly pushed her husband and gave life threat, as if, they ever asked for their money, they will be killed. Thereafter, on written complaint of applicant, FIR bearing No.709 of 2017 under sections 354A, 406, 506, 504 IPC was lodged on 25.08.2017 in Police Station, Hazratganj, District Lucknow against the private respondent and the

investigation was started but under the influence of private respondent, final report dated 28.12.2017 was prepared and was submitted to the court concerned. Thereafter, on the request of the applicant, further investigation was started but again, the police did very sketchy investigation and prepared second final report dated 08.04.2019. Feeling aggrieved by final report dated 08.04.2019, the protest petition dated 25.06.2019 was filed by the applicant. In the meantime, on 04.07.2019, SSP, Lucknow ordered for further investigation of the case in question, and thereafter, the Senior Prosecuting Officer reported to the court on 26.07.2019 about the further investigation which was allowed on the same date. Thereafter, On 24.12.2019, Parcha No.-SCD 22 was prepared, by which, the second final report dated 08.04.2019 was approved. He has next submitted that a supplementary protest petition was also filed by the applicant on 22.02.2022 before the concerned court. He has vehemently submitted that private respondent is having long criminal history as well as influence on the Investigating Officer. Therefore, the offence of cheating as well as attempt to outrage the modesty was not investigated in a proper manner. He has also submitted that the trial court has failed to consider all the police reports dated 28.12.2017, 08.04.2019 and 24.12.2019 at the time of passing the impugned order dated 02.07.2024, by which, the final report dated 28.12.2017 is accepted.

4. Learned counsel for the applicant has further drawn attention of this Court on the decision of the Hon'ble Supreme Court in the case of *Vinay Tyagi*

versus Irshad Ali reported in **2013 AIR SCW 220** as well as *Vinubhai Haribhai Malaviya and Ors. Vs. State of Gujarat and Anr.* reported in **AIR 2019 SC 5233** and submitted that the trial court was bound to consider all the police reports at the time of passing the impugned order, therefore, kind indulgence of this court is necessary.

5. Mr. Vikas Kumar Jaiswal, ACP, Hazratganj, Lucknow, on the basis of written instructions dated 01.12.2024, has informed that the private respondent is having criminal history of 47 cases.

6. Letter dated 01.12.2024 issued by In-charge, DCRB, Commissionerate, Lucknow related to the criminal incident of private respondent is reproduced as under:

“कार्यालय जिला अपराध भिलेख ब्यूरो कमिश्नरेट लखनऊ

पत्रांक- डीसीआरबी- अप०इति०/2024

दिनांक- 01.12.2024

सेवा में,

प्रभारी निरीक्षक हजरतगंज कमिश्नरेट लखनऊ ।

कृपया आप अपने पत्र दिनांक 28.11.2024 का सन्दर्भ ग्रहण करने का कष्ट करें जिसके माध्यम से अभियुक्त सुशील अंसल चेयरमैन पुत्र स्व० चिरंजीवी निवासी अंसल प्रापर्टीज एंड इंफ्रास्ट्रक्चर लिमिटेड स्थायी पता 26 फिरोहशाह रोड बाराखम्बा नई दिल्ली व डायरेक्टर अंसल एपीआई लिमिटेड कम्पनी लखनऊ के आपराधिक इतिहास की अपेक्षा की गयी है।

आपराधिक इतिहास अभियुक्त सुशील अंसल

1. मु० अ० सं० 99/20 धारा 409/420 भादवि० थाना सुशान्त गोल्फ सिटी जनपद लखनऊ
2. मु० अ० सं० 479/21 धारा 406/419/420/467/468/471 भादवि० थाना सुशान्त गोल्फ सिटी जनपद लखनऊ
3. मु० अ० सं० 529/22 धारा 409/420 भादवि० थाना सुशान्त गोल्फ सिटी जनपद लखनऊ
4. मु० अ० सं० 530/22 धारा 409/420 भादवि० थाना सुशान्त गोल्फ सिटी जनपद लखनऊ
5. मु० अ० सं० 531/22 धारा 409/420 भादवि० थाना सुशान्त गोल्फ सिटी जनपद लखनऊ
6. मु० अ० सं० 533/22 धारा 409/420 भादवि० थाना सुशान्त गोल्फ सिटी जनपद लखनऊ

7. मु० अ० सं० 535/22 धारा 409/420 भादवि० थाना सुशान्त गोल्फ सिटी जनपद लखनऊ
8. मु० अ० सं० 544/22 धारा 409/420 भादवि० थाना सुशान्त गोल्फ सिटी जनपद लखनऊ
9. मु० अ० सं० 553/22 धारा 409/420/447/467/468 भादवि० थाना सुशान्त गोल्फ सिटी लखनऊ
10. मु० अ० सं० 652/22 धारा 409/419/420 भादवि० थाना सुशान्त गोल्फ सिटी लखनऊ
11. मु० अ० सं० 55/19 धारा 120 बी/406/409/504/506 भादवि० थाना पीजीआई लखनऊ
12. मु० अ० सं० 400/19 धारा 406/420/467/468/504/506 भादवि० थाना पीजीआई लखनऊ
13. मु० अ० सं० 878/17 धारा 419/420/467/468/504/506 भादवि० थाना पीजीआई लखनऊ
14. मु० अ० सं० 138/19 धारा 406/420 भादवि० थाना विभूतिखण्ड लखनऊ
15. मु० अ० सं० 208/19 धारा 409/420 भादवि० थाना हजरतगंज लखनऊ
16. मु० अ० सं० 431/19 धारा 120 बी/409/420/506 भादवि० थाना हजरतगंज लखनऊ
17. मु० अ० सं० 441/17 धारा 406/420 भादवि० थाना हजरतगंज लखनऊ
18. मु० अ० सं० 461/18 धारा 409/420/504/506 भादवि० थाना हजरतगंज लखनऊ
19. मु० अ० सं० 645/18 धारा 409/420 भादवि० थाना हजरतगंज लखनऊ
20. मु० अ० सं० 712/17 धारा 409/420/504/506 भादवि० थाना हजरतगंज लखनऊ
21. मु० अ० सं० 709/17 धारा 354 ए/406/504/506 भादवि० थाना हजरतगंज लखनऊ
22. मु० अ० सं० 275/24 धारा 406/419/420/506 भादवि० थाना गोमतीनगर लखनऊ
23. मु० अ० सं० 942/19 धारा 406/420/504/506 भादवि० थाना पीजीआई लखनऊ
24. मु० अ० सं० 564/22 धारा 409/419/420/467/468/471/504/506 भादवि० थाना सुशान्त गो०सिटी लखनऊ
25. मु० अ० सं० 448/19 धारा 409/420 भादवि० थाना हजरतगंज लखनऊ
26. मु० अ० सं० 555/22 धारा 409/420 भादवि० थाना सुशान्त गो० सिटी लखनऊ
27. मु० अ० सं० 490/19 धारा 406/420/467/468/471/504/506 भादवि० थाना गोमतीनगर लखनऊ
28. मु० अ० सं० 460/22 धारा 419/420/467/468/471 भादवि० थाना सुशान्त गो० सिटी लखनऊ
29. मु० अ० सं० 869/17 धारा 409/420/504/506 भादवि० थाना हजरतगंज लखनऊ
30. मु० अ० सं० 254/20 धारा 120 बी/420/467/468/471 भादवि० थाना सुशान्त गो० सिटी लखनऊ
31. मु० अ० सं० 162/18 धारा 406/409/419/420/467/468/471/506 भादवि० थाना विभूतिखण्ड लखनऊ
32. मु० अ० सं० 478/19 धारा 409/420 भादवि० थाना हजरतगंज लखनऊ

33. मु० अ० सं० 709/17 धारा 354 क/406/504/506 भादवि० थाना हजरतगंज लखनऊ
 34. मु० अ० सं० 60/16 धारा 147/323/409/420/465/506 भादवि० थाना हजरतगंज लखनऊ
 35. मु० अ० सं० 59/18 धारा 409/420/504/506 भादवि० थाना हजरतगंज लखनऊ
 36. मु० अ० सं० 1185/18 धारा 323/406/419/420/467/468/504/506 भादवि० थाना पीजीआई लखनऊ
 37. मु० अ० सं० 81/19 धारा 406/420 भादवि० थाना हजरतगंज लखनऊ
 38. मु० अ० सं० 67/18 धारा 506 भादवि० थाना हजरतगंज लखनऊ
 39. मु० अ० सं० 57/20 धारा 323/406/419/420/467/468/471/506 भादवि० थाना सुशान्त गो० सिटी लखनऊ
 40. मु० अ० सं० 528/22 धारा 409/420 भादवि० थाना सुशान्त गो० सिटी लखनऊ
 41. मु० अ० सं० 225/23 धारा 120 बी/147/323/352/409/504/506 भादवि० थाना सुशान्त गो० सिटी लखनऊ
 42. मु० अ० सं० 282/22 धारा 406/419/420/467/468/471/506 भादवि० थाना सुशान्त गो० सिटी लखनऊ
 43. मु० अ० सं० 395/18 धारा 409/420 भादवि० थाना हजरतगंज लखनऊ
 44. मु० अ० सं० 931/19 धारा 406/504/506 भादवि० थाना पीजीआई लखनऊ
 45. मु० अ० सं० 83/18 धारा 409/420 भादवि० थाना हजरतगंज लखनऊ
 46. मु० अ० सं० 310/20 धारा 409/419/420/467/468/471 भादवि० थाना सुशान्त गो० सिटी लखनऊ
 47. मु० अ० सं० 986/17 धारा 120 बी/409/420 भादवि० थाना हजरतगंज लखनऊ
- अतः उपरोक्त नामित अभियुक्त के सम्बन्ध में कमिश्नरेट लखनऊ के समस्त थानों को पत्राचार किया गया जिसके आधार पर प्रभारी निरीक्षक हजरतगंज की आख्यानसार व सीसीटीएनएस पोर्टल के अवलोकन से नामित अभियुक्त के विरुद्ध कमिश्नरेट लखनऊ पर उपरोक्त अभियोगों का पंजीकृत होना पाया गया।”

7. Shri Vikas Jaiswal, ACP, Hazratganj, Lucknow as well as Shri Ved Prakash, Joint Director, Prosecution, Lucknow has also conceded this fact that after the submission of final reports dated 28.12.2017 and 08.04.2019, further investigation was ordered by the SSP, Lucknow and permission was accorded by the competent court and the last Parcha No.-SCD 22 dated 24.12.2019 was prepared by the Investigating Officer by approving the final

report dated 08.04.2019. Thereafter, supplementary protest petition was filed by the applicant on 22.02.2022, but at the time of passing the impugned order, police reports dated 08.04.2019 and 24.12.2019 were not considered.

8. Learned AGA as well as learned counsel for the complainant has also conceded this fact that at the time of passing of impugned order, all police reports ought to be considered and they have no objection, in case, the impugned order is set aside with the liberty to the competent court to pass fresh order.

9. Considering the submissions of learned counsel for the parties, going through the contents of application, contents of FIR, written instructions dated 01.12.2024, record of Chief Judicial Magistrate, Lucknow, it is evident that the FIR of case in question was lodged on the written complaint of applicant dated 25.08.2017 and the final report dated 28.12.2017 was prepared by the Investigating Officer. Thereafter, further investigation was ordered and second final report dated 08.04.2019 was prepared. Thereafter, the protest petition dated 25.06.2019 was filed by the applicant and under the approval of competent court, once again, further investigation was conducted, in which, the second final report dated 08.04.2019 was approved by the Investigating Officer by issuing Parcha No.SCD 22 dated 24.12.2019 which was submitted to the court concerned. Thereafter, supplementary protest petition dated 22.02.2022 was filed by the applicant, but the trial court committed error in not considering all the police reports dated

28.12.2017, 08.04.2019, 24.12.2019, protest petition dated 25.06.2019, supplementary protest petition dated 22.02.2022 as well as the long criminal antecedent of the private respondent.

10. In view of the above, the present application is hereby **allowed** and the order dated 02.07.2024 passed by Chief Judicial Magistrate, Lucknow related to the final report No.1 dated 28.12.2017 is hereby **set aside** with the direction to the trial court to pass fresh order after considering all the police reports dated 28.12.2017, 08.04.2017, 24.12.2019, protest petition dated 25.06.2019 and supplementary protest petition dated 22.02.2022 as well as other materials within a period of four weeks from the date of production of certified copy of this order.

11. Original record related to the Misc. Case No.4618 of 2019 be returned to the Chief Judicial Magistrate, Lucknow, forthwith in the sealed cover envelope.

Order Date :- 20.12.2024.

V. Sinha