

Court No. - 13

Case :- APPLICATION U/S 482 No. - 10069 of 2024

Applicant :- Krishna Kumar Pandey

Opposite Party :- State Of U.P. Thru. The Addl. Chief Secy. Deptt. Of Home, And Vigilance Lko. And 6 Others

Counsel for Applicant :- Tejaswini Bajpai, Tapasya Bajpai

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh, J.

1. Vakalatnama filed by Dr. Pooja Singh, Advocate on behalf of respondent nos.5 (complainant), 6 and 7 is taken on record.

2. Heard Ms. Tejaswini Bajpai and Ms. Tapasya Bajpai, learned counsel for the applicant, Mr. Piyush Kumar Singh, learned AGA for the State as well as Dr. Pooja Singh, learned counsel for complainant and perused the record.

3. The present application has been filed with following prayer:

a. To set aside/ quash the judgment dated 09.08.2024 passed by Learned Additional Sessions Judge, Court No. 17, Lucknow in Criminal Revision No. 175 of 2024 (Annexure No. 1), alongwith the judgment dated 07.02.2024 in Miscellaneous Case No. 554 of 2024 (post judgment corrected as Misc Case No. 6311 of 2022) (Annexure No. 11) passed by the Court of Learned Chief Judicial Magistrate, Lucknow on Application under section 156(3) Cr.P.C., wherein both the Learned Courts failed to exercise their jurisdiction by not directing registration of FIR despite prima facie commission of cognizable offence by the O.P. No.4 when he was incharge of P.S. Gomtinagar, Lucknow;

b. To direct for registration of FIR against the respondents no. 4 to 7 for illegal confiscation and misappropriation of mobile phones;

c. To direct for transfer of Session Trial No. 1606 of 2022 - State of U.P. Vs. Avinash Pandey & 2 Others, that was earlier transferred from the Court of Learned Additional District and - 20, Lucknow to the Court of Learned Additional District and Sessions Judge - 17, Lucknow, on 08.10.2024; to any other Presiding Officer/ Court as the footprint of the impugned Judgement dated 09.08.2024

gives all reason to believe that the Session Trial shall conclude with a smack of biasness and arbitrariness because of the presiding officer being one and the same individual.

d. To direct the concerned for transfer of investigation after lodging of the F.I.R. to any agency/ IPS rank officer, other than that of the State, for impartial and unbiased investigation.

e. To pass any other order which this Hon'ble Court deems fit and proper in the circumstances of the case.

4. Learned counsel for the applicant submitted that for unnatural death of daughter-in-law of applicant, he was taken into custody by the police on 26.08.2021 at about 07:30 AM and at the time of his arrest, two mobile phones having nos.8840413923, 9415776502 of applicant, mobile phones having nos.9450358704, 7007424026 of his son as well as mobile phone having nos.8004923640, 9026735170 of his wife were taken into custody, thereafter, applicant, his wife and his son were kept in illegal confinement in the police station- Gomti Nagar, Lucknow up to 28.08.2021. Their remand was placed before the concerned Magistrate and the objection was also raised that their mobile phones were taken by the Inspector, namely, Keshav Kumar Tiwari, PS- Gomti Nagar, Lucknow, on which, the inspector accepted the contentions of the applicant verbally and informed that after examination, mobile phones would be handed over to the younger brother of the applicant, namely, Satish Kumar Pandey. On the same day, in the night at 10:00 PM, brother of the applicant reached at the police station for taking back mobile phones of the applicant and his family members but the Inspector informed that all the mobile phones have already been handed over to the complainant, namely Ram Sevak Dwivedi and his two sons, Harsh Dwivedi and Ankit Dwivedi. But as per the call detail reports, location of the mobile phones was found near Mortuary, Medical College, Daliganj, Ramnagar Colony, Ashbagh, Lucknow, then all the mobile phones were put to switch off.

5. Learned counsel for the applicant submitted that aforesaid mobile phones were being used by father and brother of the deceased only with the

association of inspector, Keshav Kumar Tiwari, the then Station House Officer, PS- Gomti Nagar, Lucknow. They further drew attention of this Court at Annexure No.2, Page No. 41 and submitted that a letter was also given to the Commissioner of Police on 09.09.2021 with the request that the mobile phones, those were taken by the police officials from the accused persons after taking them into custody, were to be returned, but no recovery memo was prepared by the Investigating Officer. They further submitted that the brother of the applicant had also given application to the Commissioner of Police, Additional Chief Secretary, Department of Home as well as Director, General of Police, UP on 10.09.2021 with the request to pass necessary order for return of the mobile phones of the applicant and his family members. He again moved an application before the Commissioner of Police and requested for return of the mobile phones, but same was rejected. Thereafter, one application under section 156(3) CrPC was filed by the applicant on 30.11.2022 before the competent Court with the request that order may be passed for lodging of the FIR on the ground that the inspector, Keshav Kumar Tiwari, with the association of complainant and his two sons, has taken away the mobile phones of the applicant and his family members mischievously only with the intention to destroy the favourable evidence, but the said application was rejected by the trial court on 09.06.2023 in the most arbitrary and mechanical manner. Thereafter, revision was filed, which was allowed vide order dated 20.01.2024. But the Magistrate again rejected the aforesaid application on 07.02.2024. A revision was again filed which was also rejected on 09.08.2024 in the most mechanical manner.

6. In support of their submission, they relied on the decision of Hon'ble Apex Court in the cases of ***Lalita Kumari vs Govt. of UP and Others*** reported in (2013) 14 SCR 713, ***CBI Vs. Tapan Kumar Singh*** reported in (2003) 6 SCC 175, ***DK Basu Vs. State of West Bengal*** reported in (1997) 15CC 416, ***Mohd. Imran Khan Vs. State (Govt. of NCT of Delhi)*** reported in (2011) 10 SCC 192 as well as ***D. Devraj Vs. Owais Sabbir Hussain*** reported in (2020) 7

SCC 695 and submitted that in case, after going through the entire complaint, cognizable offence is made out, then it is obligatory on the part of SHO as well as the Magistrate to order for registering the FIR and investigate the case. Therefore, kind indulgence of this court is necessary.

7. Learned AGA as well as learned counsel for the complainant has vehemently opposed the prayer of applicant and submitted that due to mysterious death of the daughter of complainant, FIR No.591 of 2021 under section 498A, 302, 504, 34 IPC was lodged. They further submitted that total 10 injuries were found on the body of the deceased and after detailed investigation, charge sheet was submitted by the investigating officer against accused persons for the offences under sections 498A, 504, 201, 120B and 302 read with section 34 IPC. Thereafter, the case was committed to the court of sessions and trial was proceeded after framing of charges. At this stage, six witnesses have already been examined and presently, deposition of seventh witness is going on. Therefore, only with the intention to delay the proceeding of trial, the application was moved before the competent court. In such circumstances, trial court has rightly rejected the application as well as revision of the applicant.

8. Considering the submissions of learned counsel for the parties, going through the contents of application, judgments relied upon by the learned counsel for the applicant, application under Section 156 (3) CrPC, impugned orders as well as other relevant documents, it is evident that FIR No.591 of 2021 (*supra*) was lodged against the applicant and other family members, and thereafter, investigation was started and charge-sheet was submitted within three months from the date of arrest of the applicant, but no application was moved by the applicant or his family members for procuring the mobile phones as mentioned in the complaint dated 22.11.2022 as well as in the pleadings. As it is also evident that one application was given by brother of the applicant, namely Satish Kumar Pandey on 10.09.2021 to the Commissioner of Police, Lucknow through registered post, but no such pleadings are

mentioned for taking away the mobile phones and request for procuring the said phones. In such circumstances. The laws relied upon by the learned counsel for the applicant are not applicable in the present case. In such circumstances, there is no illegality in the order passed by the trial court and Magistrate, therefore, the present application has no merit and is liable to be rejected.

9. Accordingly, the present application is hereby **dismissed**.

10. However, it is always open to the applicant to take all the pleadings before the trial court in the Case Crime No.591 of 2021 (*supra*) at the appropriate stage.

Order Date :- 25.11.2024
V. Sinha