

Court No. - 13

Case :- APPLICATION U/S 482 No. - 11304 of 2024

Applicant :- Aditya Pratap Singh @ Monu And 2 Others

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

Counsel for Applicant :- Mahendra Pratap Singh,Ranjit Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh,J.

1. In pursuance of earlier order, Investigating Officer/Inspector Sri Vijay Singh Gaur, S.I.T., U.P., Lucknow, is present alongwith complete case-diary.

2. Learned A.G.A. has filed counter affidavit, which is taken on record.

3. The present petition is filed with the following prayer:

".... this Hon'ble Court may very kindly be pleased to quash the entire criminal proceedings of Special Case No. 289 of 2024 (Misc. Criminal Case No.1220 of 2023) arising out of F.I.R./Case Crime No. 0028 of 2021 under Sections 419,420,467,468,471,34,120B, I.P.C., P.S. S.I.T., District Lucknow, and to quash the chargesheet dated 19.09.2023 relating to Case Crime No. 0028/2021 under Section 419/420,467,468,471,34,120B, I.P.C., P.S. S.I.T., District Lucknow, as well as order of cognizance and summoning order dated 13.02.2024 issued against the applicants in the aforementioned case."

4. Heard learned counsel for the applicant Sri Mahendra Pratap Singh, Advocate, as also Mr. Rao Narendra Singh, Advocate, as well as the learned A.G.A. and perused the record.

5. Learned counsel for the applicants submitted that on the basis of one arrest/recovery-memo, which was entered into GD No. 71, dated 28.12.2019, P.S. Ram Nagar, District Kashi, the F.I.R. No. 279 of 2019 under Sections 471, 468, 467, 420, 419, I.P.C., P.S. Ram Nagar, District Kashi, was lodged on the aforesaid recovery/arrest-memo of Inspector Sri Vipin Kumar Rai. The investigation of aforesaid case was conducted by the Investigating Officer of the concerned police station, who prepared chargesheet dated 28.12.2019 and 20.10.2020 and submitted before the concerned court in the judgeship of Varanasi and, thereafter, on the same arrest/recovery-memo F.I.R. No. 28 of 2021 under Sections 419, 420, 467, 468, 471, I.P.C., P.S. S.I.T., Lucknow, was lodged on the complaint of same complainant, namely, Sri Vipin Kumar Rai, and thereafter chargesheet was prepared on 19.09.2023 by the investigating officer and cognizance was taken by the Special Court, S.I.T.,

Lucknow, on 13.02.2024. He further submitted that it is well settled by the Hon'ble Supreme Court in the case of T.T. Antony v. State of Kerala & ors., reported in (2001) 6 SCC 181, and Tarak Das Mukherji & ors. V. State of U.P. & ors., Criminal Appeal No. 1400 of 2022, that two F.I.Rs. for the same incident cannot be lodged, therefore, the proceeding for lodging of the second F.I.R. in the S.I.T. is bad in the eyes of law as well as the consequential proceedings by way of submission of chargesheet is also illegal and same is liable to be set aside, therefore, kind indulgence of this court is necessary.

6. Learned A.G.A. vehemently opposed the prayer of applicants and submitted as on the basis of some input about the evasion of goods tax the search was conducted and several persons were arrested by the police officials, as a result arrest/recovery memo was prepared and later on F.I.R. No. 279 of 2019 under Sections 471, 468, 467, 420, 419, I.P.C., was lodged on the complaint of Mr. Vipin Kumar Rai, Inspector, and the said information was also entered into the G.D. No. 71 at 52.59 hrs. on 28.12.2019 at P.S. Ram Nagar, District Varanasi and the chargesheet was submitted by the investigating officer on 28.12.2019 and 20.10.2020 before the competent Magistrate.

7. At the same time the State Government decided vide its order No. 984P/Chha-Pu.-3-21 SIT-2021, dated 16.07.2021 and assigned the further investigation to Special Investigation Team and thereafter the information with the same verbatim was registered as F.I.R./Crime No. 28 of 2021 under Sections 419, 420, 467, 468, 471, I.P.C., P.S. S.I.T., Lucknow, and this is not a second F.I.R. As per the practice, in case any investigation is transferred to S.I.T., then same is being registered in their fashion, therefore, submission of the counsel for the applicant that this is the second F.I.R., is not sustainable and he also submitted that the applicants were fully aware about lodging of the F.I.R. in the P.S. S.I.T., Lucknow, as the notice was given under Section 160 of Cr.P.C. on 10.06.2022 to the applicants for recording their evidence and they also appeared and cooperated in the investigation and proper information was given to them and their statement under Section 161 Cr.P.C. were also recorded. He further submitted that application has already been given before A.C.J.M.-IX, Varanasi, for transfer of the case related to the chargesheet dated 28.12.2019 and 20.10.2020 in F.I.R. No. 279 of 2019 under Sections 419, 420, 467, 468, 471, I.P.C., P.S. Ram Nagar, District Kashi, but the same is pending. As all the investigation conducted by the local Police and S.I.T. are to be tried before Special Court, therefore, the chargesheet after investigation by the S.I.T. has submitted to Special Court and this cannot be transferred to the court of Magistrate at Varanasi, therefore, the investigating agency is pursuing for

transfer of the entire case pending before the A.C.J.M.-IX, Varanasi to Special Court, S.I.T., Lucknow. In such circumstances, submissions of the counsel for the applicants are baseless.

8. Considering submissions of the learned counsel for the parties and going through the contents of the petition as well as other relevant documents placed by the investigating officer, as the F.I.R. No. 28 of 2021, P.S. S.I.T., Lucknow, is not a second F.I.R., but it is an F.I.R. lodged by the S.I.T. in its Police Station, because the investigation of F.I.R. No. 279 of 2019 was transferred from P.S. Ram Nagar, Kashi (supra) to S.I.T. by the State Government for further investigation, as it is also undisputed fact that the statements of the applicants were recorded during the course of investigation by the S.I.T. by giving notice under Section 160 of Cr.P.C. The petition is hereby **disposed off**, however, the A.D.G., S.I.T., is directed to take effective step for transfer of the chargesheet dated 28.12.2019 and 20.12.2020 in relation to F.I.R. No 279 of 2019, P.S. Ram Nagar, District Kashi (supra), dated 28.12.2019 forthwith to the Special Court at Lucknow.

9. Till the transfer of the Police report related to the F.I.R. No. 279 of 2019 P.S. Ram Nagar, District Kashi (supra) before the Special Court. S.I.T., Lucknow, no coercive steps shall be taken against the petitioners.

10. It is also made clear that in case the applicants/accused persons of case Crime No. 279 of 2019, P.S. Ram Nagar, District Kashi (supra) are on bail, then they should not be compelled to apply for bail in F.I.R. No. 28 of 2021, under Sections 419, 420, 467, 468, 471, I.P.C., P.S. S.I.T., Lucknow.

(Rajeev Singh, J.)

Order Date :- 19.12.2024

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