

A.F.R.

Neutral Citation No. - 2024:AHC:147734-DB

Judgement Reserved On: 02.9.2024

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Court No. - 45

**Case :-** CRIMINAL MISC. WRIT PETITION No. - 15393 of 2024

**Petitioner :-** Devendra Tripathi And Another

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Ramesh Kumar Singh

**Counsel for Respondent :-** Jitendra Kumar Shukla,G.A.

**Hon'ble Siddhartha Varma,J.**

**Hon'ble Ram Manohar Narayan Mishra,J.**

*(Per:Hon'ble Ram Manohar Narayan Mishra,J.)*

1. By means of present writ petition, the petitioners, who are accused in present case, have prayed for issuance of a writ of mandamus directing the respondent Nos.1 and 2 to appoint another agency for fair investigation in Case Crime No.116 of 2023, under Sections 452, 376, 313, 506, 323, 427 IPC, P.S. Madhian, District Mirzapur, within stipulated period as fixed by this Hon'ble court.

2. Heard learned counsel for the petitioners, learned counsel for the respondent No.4, Sri Amit Sinha learned AGA for the State and perused the material placed on record.

3. The factual matrix of the case in brief are that the informant moved an application under Section 156(3) Cr.P.C. before the Court of Magistrate in District Court Mirzapur with allegations that on 17.7.2023, at around 7:00 AM, she was alone in the house, accused Girja Shanker @ Gopal (petitioner no.2) forcefully made his entry in her house and asked her for a spade. When she stated that her husband had taken the same to field, he tried to molest her and started touching her private parts by hand whereupon she raised cry. The accused dashed her on a cot and inserted finger in her private part; her husband reached there on hearing her noise, thereupon co-accused Satya Prakash and Devendra Tripathi arrived there together with an unknown person. They dashed her husband on ground and assaulted the victim and her husband by kicks and fists. When the

victim prayed for mercy to miscreants on the ground of her pregnancy, then they assaulted her on her abdomen by kicks and have torn her clothes and outraged her modesty. They also assaulted her on her private parts which resulted in bleeding from her private parts and her child got killed in womb. Some persons reached there co-accidentally and then the accused persons fled away from the spot after damaging her household goods and threatening the victim and her husband with life. Her report was not lodged at police station concerned. The FIR was lodged on 27.8.2023, at 17:47 hours vide GD Entry No.032, dated 27.8.2023 time 17:47 hours, at police station concerned following the order of learned Magistrate passed on the application under Section 156(3) Cr.P.C. The police investigated the case and filed a charge-sheet against accused Satya Prakash Tripathi for charge under Sections 313, 323, 427, 452 and 506 IPC. The learned Magistrate took cognizance of the offence and summoned the accused. The investigation has been kept pending against co-accused Girja Shanker @ Gopal and Devendra Tripathi, who are son and father, respectively.

4. Learned counsel for the petitioners against whom the investigation has been kept pending have stated that they have prayed for a writ of mandamus from this Court to appoint another agency for fair investigation in said criminal case. FIR version is totally wrong, baseless and concocted. Petitioner No.1 is a very old person of 75 years of age and petitioner No.2 is his son. It is inconceivable that father and son would be involved in such type of offence together. The FIR has been lodged maliciously by the informant by filing an application under Section 156(3) Cr.P.C. before the Magistrate. The said application was filed belatedly before the Court after 9 days of the incident i.e. on 26.7.2023. The real bone of contention between the parties is that a partition suit bearing Case No.38 of 2017, under Section 116 of UP Revenue Code is pending before the Court of Sub Divisional Magistrate, Mirzapur, in which petitioner No.1 is plaintiff and other co-owners are respondents.

The respondent No.4 (Informant) on the basis of a forged sale deed dated 4.6.2020, filed a mutation case before Tehsildar, Madhian, which bears Case No.91/631 of 2020 (Nitu Kumari vs. Rajendra Prasad), which is pending in the Court of Nayab Tehsildar, Madhian, in which petitioner No.1 filed objection. When the informant and her colleagues came on spot to take over possession of the land, then the petitioner got apprised of a forged sale deed on which basis respondent No.4 filed mutation application. Petitioner No.1 filed Civil Suit No.37 of 2023 (Devendra Tripathi vs. Nitu Kumari and others) on 29.5.2023 with a prayer to declare the said sale deed dated 4.6.2020 void and also for decree of injunction on 29.5.2023 and after filing of the present suit by petitioner No.1, the respondent No.4 moved an application on 23.7.2023 under Section 156(3) Cr.P.C. for registration of FIR with regard to an alleged incident dated 17.7.2023 with wild allegations against the petitioners and co-accused Satya Prakash Tripathi. He next submitted that the said FIR was lodged only with a view to exert pressure on petitioners and co-accused Satya Prakash Tripathi as latter filed various applications against respondent No.4 and her husband regarding raising of illegal construction on disputed land. The copy of medical examination and radiological examination of the informant has been filed as annexure to present petition, which reveal that no clinically injury seen in private parts, genitalia and any body parts, only slightly bleeding P/V was found present. Petitioner No.1 has also filed an application under Section 156(3) Cr.P.C. against respondent No.2 and others before the Court of Magistrate on 6.7.2023 for lodging of FIR with regard to execution of forged sale deed on 4.6.2020 with a view to cause wrongful loss to him and said application has been treated as complaint by learned Magistrate and directed recording of statement under Sections 200 and 202 Cr.P.C., which is still pending before the court concerned. Various civil cases are pending before the competent courts between the contesting parties. Respondent No.4 bears political cloud and local police is in her pressure. Therefore, the petitioners do not

expect fair investigation from local police and therefore, some other agency may be entrusted the investigation of the case lodged against the petitioners.

5. Per contra, learned counsel for the respondent No.4 and learned AGA vehemently opposed the prayer for appointing another agency for investigation of the case.

6. Learned AGA cited an authority of Hon'ble Apex Court in **Romila Thapar and others vs. Union of India and others, (2018) 10 SCC 753**, in support of his contention that the prayer made in present petition is not tenable legally. In said case Hon'ble Apex Court formulated following questions for consideration:-

*(i) Should the Investigating Agency be changed at the behest of the named five accused?*

*(ii) If the answer to point (i) is in the negative, can a prayer of the same nature be entertained at the behest of the next friend of the accused or in the garb of PIL?*

*(iii) If the answer to question Nos.(i) and/or (ii) above, is in the affirmative, have the petitioners made out a case for the relief of appointing Special Investigating Team or directing the Court monitored investigation by an independent Investigating Agency?*

*(iv) Can the accused person be released merely on the basis of the perception of his next friend (writ petitioners) that he is an innocent and law abiding person?*

7. The Hon'ble Apex answered question No.1 in following manner:

*“24. This Court in the case of Divine Retreat Centre Vs. State of Kerala and Ors.12, (2008) 3 SCC 542 has enunciated that High Court in exercise of its inherent jurisdiction cannot change the investigating officer in the*

*midstream and appoint an investigating officer of its own choice to investigate into a crime on whatsoever basis. The Court made it amply clear that neither the accused nor the complainant or informant are entitled to choose their own Investigating Agency to investigate the crime in which they are interested. The Court then went on to clarify that the High Court in exercise of its power under [Article 226](#) of the Constitution can always issue appropriate directions at the instance of the aggrieved person if the High Court is convinced that the power of investigation has been exercised by the investigating officer mala fide.*

*25. Be that as it may, it will be useful to advert to the exposition in [State of West Bengal and Ors. Vs. Committee for Protection of Democratic Rights, West Bengal and Ors.](#)<sup>13</sup> In paragraph 70 of [the said decision](#), the Constitution Bench observed thus:*

*“70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by [Articles 32](#) [13 \(2010\) 3](#) SCC 571 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process*

*lose its credibility and purpose with unsatisfactory investigations.”*

*26. In the present case, except pointing out some circumstances to question the manner of arrest of the five named accused sans any legal evidence to link them with the crime under investigation, no specific material facts and particulars are found in the petition about mala fide exercise of power by the investigating officer. A vague and unsubstantiated assertion in that regard is not enough. Rather, averment in the petition as filed was to buttress the reliefs initially prayed (mentioned in para 7 above) – regarding the manner in which arrest was made. Further, the plea of the petitioners of lack of evidence against the named accused (A16 to A20) has been seriously disputed by the Investigating Agency and have commended us to the material already gathered during the ongoing investigation which according to them indicates complicity of the said accused in the commission of crime. Upon perusal of the said material, we are of the considered opinion that it is not a case of arrest because of mere dissenting views expressed or difference in the political ideology of the named accused, but concerning their link with the members of the banned organisation and its activities. This is not the stage where the efficacy of the material or sufficiency thereof can be evaluated nor it is possible to enquire into whether the same is genuine or fabricated. We do not wish to dilate on this matter any further lest it would cause prejudice to the named accused and including the co-accused who are not before the Court. Admittedly, the named accused have already resorted to legal remedies before the jurisdictional Court and the same are pending. If so, they can avail of such remedies as may be permissible in law before the jurisdictional courts at different stages during the investigation as well as the trial of the offence under investigation. During the investigation, when they would be produced before the Court for obtaining remand by the Police or by way of application for grant of bail, and if they are so advised, they can also opt for remedy of discharge at the appropriate stage or quashing of criminal case if there is no legal evidence, whatsoever, to indicate their complicity in the subject crime.*

*27. In view of the above, it is clear that the consistent view of this Court is that the accused cannot ask for changing the Investigating Agency or to do investigation in a particular manner including for Court monitored investigation. The first two modified reliefs claimed in the writ petition, if they were to be made by the accused themselves, the same would end up in being rejected. In the present case, the original writ petition was filed by the persons claiming to be the next friends of the concerned accused (A16 to A20). Amongst them, Sudha Bhardwaj (A19), Varvara Rao (A16), Arun Ferreira (A18) and Vernon Gonsalves (A17) have filed signed statements praying that the reliefs claimed in the subject writ petition be treated as their writ petition. That application deserves to be allowed as the accused themselves have chosen to approach this Court and also in the backdrop of the preliminary objection raised by the State that the writ petitioners were completely strangers to the offence under investigation and the writ petition at their instance was not maintainable. We would, therefore, assume that the writ petition is now pursued by the accused themselves and once they have become petitioners themselves, the question of next friend pursuing the remedy to espouse their cause cannot be countenanced. The next friend can continue to espouse the cause of the affected accused as long as the concerned accused is not in a position or incapacitated to take recourse to legal remedy and not otherwise.*

8. With above observations, the Hon'ble Apex Court concluded that **“In view of the above, it is clear that the consistent view of this Court is that the accused cannot ask for changing the Investigating Agency or to do investigation in a particular manner including for Court monitored investigation.** However, Hon'ble Apex Court while placing reliance on an earlier judgement in In [Narmada Bai v State of Gujarat](#),<sup>22</sup> the petitioner filed a writ 22 (2011) 5 SCC 79, observed that “this case supports my view that in the interest of justice, and particularly when there are serious doubts regarding the investigation being carried out, it is not only permissible, but our constitutional duty to ensure that the

investigation is carried out by a special investigation team or a special investigative agency so that justice is not compromised.”

9. In present case, the main contention raised on behalf of the petitioners is that they have been roped in by the informant in present criminal case with a view to exert pressure in a civil suit filed at the instance of petitioner No.1 for avoidance of a sale deed propounded by respondent No.4, the informant with regard to disputed land on which petitioners claimed their title and possession. Only, on this count, it cannot be discerned that the case lodged at the instance of the informant is malicious or investigation carried out by the police has been shoddy or perfunctory or partial. Law will take its own course.

10. Without expressing any opinion on the version and counter version of the informant and accused side and placing reliance on the dictum of Hon'ble Apex Court in above cited case, we are of the considered opinion that the prayer made in present writ petition is not liable to be granted.

11. Accordingly, present writ petition stands **dismissed**.

12. However, it is made clear that any observation made hereinabove will have no bearing on the merits of the case.

**Order Date :- 10.9.2024**

Kamarjahan