

Court No. - 80

Case :- APPLICATION U/S 482 No. - 23191 of 2024

Applicant :- Deepak Kumar

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Awadhesh Kumar Malviya

Counsel for Opposite Party :- G.A.

Hon'ble Vinod Diwakar,J.

1. Heard learned counsel for the applicant and learned A.G.A. for the State.

2. The instant application has been preferred with the prayer to quash the impugned order dated 03.06.2024, passed by the Additional Chief Judicial Magistrate-IVth, District Jaunpur in Criminal Case No. 294 of 2021, titled as State v. Bijendra, arising out of Case Crime No. 241 of 2017, under Sections 419, 420, 471 IPC and Section 15 Indian Medical Council Act, P.S. Mungra Badshahpur, District Jaunpur.

3. Learned counsel for the applicant submits that the applicant is the owner of the house, which was taken on rent by Dr. Ram Prakash Singh- a Government Doctor- for a private doctor who was to run a clinic under his supervision. The First Information Report was lodged against the opposite party No. 2 along with others with the allegations that the applicant has allowed the accused to run a clinic from his house without approval from the government, and the act of the applicant invites contravention of ingredients of Section 15 of Indian Medical Council Act. Therefore, the house of the applicant was sealed by the Investigating Officer and aggrieved by the same, the applicant filed an application before the trial court to de-seal his house, but

the same was rejected. Being aggrieved by the rejection order, the applicant approached this Court for de-sealing his house, and the co-ordinate Bench of this Court vide order dated 12.12.2018, directed the court below to handover the possession of the house in accordance with law after handing over the goods/medical equipment's to a responsible person being the case property. The relevant portion of the order dated 12.12.2018, passed by the coordinate Bench of this Court in Application u/s 482 No. 45198 of 2018, is extracted herein below:

"After considering the rival submissions it is directed that court below shall give goods lying in the house in custody to the some responsible person being the case property."

4. In compliance with the order dated 12.12.2018, the applicant preferred an application before the trial court to de-seal his house. The said application was rejected vide the impugned order dated 03.06.2024, with the observation that the goods lying in the house are case property, and if the goods are handed over to a responsible person, it may change the nature of evidence. Therefore, the house could not be de-sealed/released.

5. *Per-contra*, learned A.G.A. has opposed the prayer made in the application.

6. It is disturbing that the trial court has failed to understand as to how the nature of evidence could be changed if the house is de-sealed after making a proper inventory of the goods lying in the house and is handed over to the Investigating Officer, even to the extent if the goods are released to the accused persons-owner of the medical equipment and other articles- against the execution of proper surety bond equivalent to the value of the seized goods against the proper inventory as suggested by order of Supreme

Court in **Sunderbhai Ambalal Desai Vs. State of Gujarat, (2002) 10 SCC 283.**

7. Based on the foregoing discussions, learned Additional Chief Judicial Magistrate, Jaunpur is directed to read and understand Supreme Court's judgment, passed in Sunderbhai Ambalal Desai's case (supra) and provisions of Section 451 Cr.P.C. and appreciate the same in the light of the facts of instant case and law.

8. If still learned ACJM needs clarification because of having lack of understanding to read and understand Sunderbhai Ambala Desai's case (supra), may place a request to the Registrar General of this Court through learned District Judge, Jaunpur so that appropriate direction may be issued to the Judicial Training and Research Institute for his refresher course.

9. With the aforesaid observation, the instant application is disposed of with the direction to the learned Additional Chief Judicial Magistrate to decide the applicant's application in light of the observation made in an order dated 12.12.2018, passed by the coordinate Bench of this Court, within one week of the receipt of the order.

Order Date :- 23.8.2024

A. Tripathi

Justice Vinod Diwakar