

Court No. - 15

Case :- APPLICATION U/S 482 No. - 5106 of 2022

Applicant :- Subesh Kumar Singh

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Deptt. Govt. Of U.P. Civil Secrett. Lucknow And Others

Counsel for Applicant :- S M Singh
Royekwar, Sumeet Tahilramani

Counsel for Opposite Party :- G.A., Anurag Kumar Singh

Hon'ble Ajai Kumar Srivastava-I,J.

Heard Sri S M Singh Royekwar, learned counsel for the applicant, Sri Rajesh Kumar Singh and Sri Alok Saran, learned A.G.A. for the State, Sri Anurag Kumar Singh, learned counsel for the C.B.I. and perused the entire record.

The instant application has been filed by the applicant for quashing the summoning order dated 07.07.2022 passed by Court of Special Judicial Magistrate, C.B.I., Lucknow in Complaint Case No.3845/2019 "State through C.B.I. vs. Unknown-Complainant Malti Sachan" whereby the applicant has been summoned to face trial under Sections 302 & 120-B I.P.C.

It is submitted by learned counsel for the applicant that the applicant is innocent, who has been falsely implicated in this case. His further submission is that initially in respect of alleged murder of Dr. Y. S. Sachan, an F.I.R. came to be lodged on 26.06.2011 by the opposite party no.3 as Case Crime No.276 of 2011 against unknown

culprits. This matter was investigated by Central Bureau of Investigation (hereinafter referred to as C.B.I.) in compliance with the order passed in Public Interest Litigation bearing Writ Petition No.6601 (MB) of 2011 and upon conclusion, C.B.I. found the death of deceased/Dr. Y. S. Sachan as suicide and submitted a closure report bearing Closure Report No.07/2012 dated 27.09.2012 before the Court of Special Judicial Magistrate, C.B.I., Lucknow.

It is further submitted by learned counsel for the applicant that against the aforesaid closure report, the opposite party no.3 preferred a protest petition before the learned Magistrate, who vide its order dated 22.02.2013 allowed the protest petition and rejected the closure report filed by the C.B.I. and directed D.I.G., C.B.I., SC III, New Delhi for further investigation of the matter. After subsequent further investigation again closure report bearing Final Report No.06 dated 09.08.2017 came to be filed by C.B.I., wherein no role of the present applicant was found in the alleged murder of Dr. Y. S. Sachan. His death was found to be suicidal. The opposite party no.3 again preferred a protest application before the learned Magistrate against the aforesaid second closure report submitted by C.B.I. which came to be rejected vide order dated 19.11.2019 passed by learned Magistrate and protest petition was treated as a complaint.

Thereafter, in support of the complaint case, the statement of complainant/opposite party no.3 was

recorded under Section 200 Cr.P.C. and the statements of other six witnesses were also recorded under Section 202 Cr.P.C.

Thus the impugned order dated 07.07.2022 came to be passed by the Special Judicial Magistrate, C.B.I., Lucknow whereby the applicant and some other co-accused persons have been summoned to face trial for the offences under Sections 302 & 120-B I.P.C. which according to learned counsel for the applicant is nothing but abuse of process of court since the impugned order does not reflect the application of judicial mind by learned trial Court while issuing process against the applicant for facing trial for the offences under Sections 302 & 120-B I.P.C.

Learned counsel for the applicant further submits that the impugned order dated 07.07.2022 does not disclose, prima facie, existence of ingredients constituting offences under Sections 302 & 120-B I.P.C., therefore, the impugned order is not sustainable which deserves to be quashed.

To buttress his aforesaid contention, learned counsel for the applicant has placed reliance on the judgment rendered by Hon'ble the Apex Court in Pepsi Food Ltd. and another vs. Special Judicial Magistrate and others, reported in (1998) 5 SCC 749 (Para 28).

Learned counsel for the applicant has further submitted that an agency like C.B.I. has already undertaken thorough investigation of the matter twice. The C.B.I. did not find the death of Dr. Y. S.

Sachan as homicidal. Therefore, it submitted closure report twice.

Learned counsel for the applicant has concluded his submission by submitting that the applicant was posted as Inspector General of Police, Lucknow Range from 25.12.2010 to 01.10.2011. He being a public servant has a statutory protection under Section 197 Cr.P.C. Therefore, the impugned order is also bad in want of prior sanction as required by Section 197 Cr.P.C. which cannot be sustained.

Sri Rajesh Kumar Singh and Sri Alok Saran, learned A.G.A. for the State have submitted that the impugned order has come to be passed against the applicant by the learned trial Court on the basis of the statement of opposite party no.3 recorded under Section 200 Cr.P.C. and other witnesses produced by her, whose statements were recorded under Section 202 Cr.P.C. Therefore, the impugned order does not suffer from any illegality or irregularity. However, they have been unable to dispute the fact that pursuant to the order dated 14.07.2011 passed by this Court in Public Interest Litigation bearing Writ Petition No.6601 (MB) of 2011, the matter was investigated by the C.B.I. and closure reports were submitted twice by the C.B.I.

Shri Anurag Kumar Singh, learned counsel appearing for C.B.I. has very fairly submitted that the C.B.I. was entrusted with the investigation of Case Crime No.276 of 2011 in respect of alleged

murder of Dr. Y. S. Sachan. The C.B.I. conducted the investigation meticulously and having found that the death of Dr. Y. S. Sachan was suicidal, rightly submitted closure report twice.

Having heard aforesaid submissions of Sri S.M. Singh Royekwar, learned counsel for the applicant, Sri Rajesh Kumar Singh and Sri Alok Saran, learned A.G.A. for the State, Sri Anurag Kumar Singh, learned counsel for C.B.I. and upon perusal of record, the matter requires consideration.

Notice on behalf of opposite party no.1 has been accepted by learned A.G.A. whereas Sri Anurag Kumar Singh has accepted notice on behalf of opposite party no.2.

Issue notice to the opposite party no.3, returnable at an early date to be served through C.J.M. concerned.

Steps be taken within three days positively.

Let counter affidavits be filed by the opposite parties within two weeks.

A week's time thereafter shall be available to learned counsel for the applicant to file rejoinder affidavit.

List immediately after expiry of the aforesaid period.

Meanwhile, the impugned order dated 07.07.2022 shall not be given effect to qua the applicant.

Office is directed to intimate this order to the Chief Judicial Magistrate concerned through Fax/E-mail

immediately for information and necessary compliance.

(Ajai Kumar Srivastava-I,J.)

Order Date :- 5.8.2022

Mahesh