

Case :- CRIMINAL MISC. WRIT PETITION No. - 6583 of 2022

Petitioner :- Sumit Kumar And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Sudhir Mehrotra

Counsel for Respondent :- G.A.,Anwar Hussain

ALONG WITH

Case :- CRIMINAL MISC. WRIT PETITION No. - 6978 of 2022

Petitioner :- Smt. Rekha

Respondent :- State Of Up Through Principle Secretary Department Of
Home And 4 Others

Counsel for Petitioner :- Anwar Hussain,Dwijendra Prasad

Counsel for Respondent :- G.A.,Sudhir Mehrotra

Hon'ble Suneet Kumar,J.

Hon'ble Syed Waiz Mian,J.

Learned counsel for the petitioners is permitted to implead Director, Central Bureau of Investigation, New Delhi, in the array of the respondents, in Writ Petition No. 6583 of 2022, during the course of the day.

Heard Sri Sudhir Mehrotra, learned counsel for the petitioner, Sri Anwar Hussain, learned counsel for the complainant and learned A.G.A. for the State. Perused the material placed on record.

By the instant writ petition, petitioners seek quashing of the F.I.R. dated 24.03.2022, lodged by the third respondent against unknown persons, registered as Case Crime No. 108/2022, under sections 363, 366 I.P.C., Police Station Rasoolpur, District Firozabad. Further, prayer has been made not to arrest the petitioners and to transfer the investigation to the Central Bureau of Investigation, New Delhi (for short 'CBI').

The issue being raised in the instant writ petition is that the police officials of District Mathura have lodged a large number of fraudulent and false cases, either against the petitioners or his brother so as to pressurize them to compromise in earlier cases and present F.I.R. has been lodged not to press the enquiry report, wherein, 35 police officials have been found, prima facie, guilty of lodging false cases and of stage managing false crime cases against the petitioners and their brother Puneet Kumar.

The companion writ petition (6978/2022) has been filed by the complainant seeking fair investigation of Case Crime No. 108/2022, which is subject matter of challenge in the leading writ petition.

The facts, briefly stated, is that on 04.10.2013, one Prem Singh and other made attempt on the life of the petitioners' brother Puneet Kumar, complaint was made by mother of the petitioners. The police officials, instead lodging F.I.R. booked the first petitioner under Section 151, 107, 116 Cr.P.C. Thereafter, petitioners' mother Maya Devi filed an application under section 156(3) Cr.P.C., on the basis thereof, Case Crime No. 19 of 2014 was registered under sections 147, 148, 149, 120-B, 323, 392, 307, 324, 452, 504, 506 I.P.C., Police Station Highway, District Mathura.

Aggrieved, police officials, in connivance with the accused persons, lodged F.I.R. being Case Crime No. 514 of 2014, under sections 323, 504, 506, 452, 354 I.P.C., at Police Station Highway, District Mathura, against the petitioners, their brother and their mother.

Mother of the petitioners, aggrieved by the conduct of the police officials lodging false cases, approached the National Human Rights Commission, New Delhi (for short 'Commission'), and on the directions of the Commission on 10.08.2016, Case Crime No. 787 of 2016, was registered at Police Station Highway, District Mathura, under Section **166-A**, against Surendra Singh Yadav, Station House Officer, Police Station Highway, Mathura, and Sub-Inspector Netrapal Singh.

It is further stated that on 10.01.2018, Puneet Kumar, brother of the petitioners, along with one auto driver was taken into custody by Special Operation Group (SOG) personnel. Petitioners responded by dialling 100 and 112 to the Police Patrolling Party. On 12.01.2018, the brother of the petitioners, namely, Puneet Kumar, came to be arrested in Case Crime No. 8 of 2018, under Section 4/25 Arms Act; Case Crime No. 10 of 2018 under section 414 I.P.C. read with 41/102 I.P.C. which was later converted to Section 392, 411 I.P.C. The petitioners belong to marginalized section of society (SC) approached the National Commission for Schedule Castes, U.P. Lucknow (for short 'SC Commission'). On 03.08.2020, SC Commission directed the Special Enquiry Cell to hold an enquiry with regard to the involvement of police personnel in respect of the incident dated 10.01.2018, pursuant to which Puneet Kumar, brother of the petitioners was illegally detained and later on implicated in false serious cases. Sri Prem Singh, Additional Superintendent of Police (Special Enquiry), Head Quarter Lucknow, pursuant to the directions and in compliance of the SC Commission, submitted a report on 06.09.2021, wherein, the named police personnels therein, prima facie, were found involved in detaining illegally Puneet Kumar and implicated him in false cases and submitted false charge sheet in connivance with Senior Supervisory Officer.

It appears that nothing was done in the matter on the report. Aggrieved, brother of the petitioners again approached the SC Commission, consequently, SC Commission, vide communication dated 15.02.2022, addressed to the Director General of Police, U.P. Lucknow, sought information as to whether any action was taken on the report dated 06.09.2021, submitted by the Additional Superintendent of Police (Special Enquiry). The Director General of Police was directed to submit report by 15.03.2022. It is alleged that immediately thereafter the impugned F.I.R. being Case Crime no. 108 of 2022, under Sections 363, 366 I.P.C., Police Station Rasoolpur, District Firozabad, was registered at the

instance of the complainant against unknown persons and during the course of investigation it is alleged that the name of the petitioners surfaced in commission of the crime on a statement made by the victim under section 164 Cr.P.C.

In para 22 of the writ petition, it has been stated that Sri Harvendra Mishra, currently posted at Police Station Ramgarh, District Firozabad, made rigorous efforts to settle the matter by pressurizing the petitioners, and on refusal by the family members of the petitioners it is alleged that he has set up the complainant Rekha Devi and her daughter Manisha, wife of Sunil, to get the present F.I.R. lodged.

It is pointed out that Sri Harvendra Mishra is one of the police personnel, at serial no. 18 of the report, of having been involved in lodging false cases against Puneet Kumar, brother of the petitioners.

It is further submitted that the alleged documents pertaining to chatting by the victim with the petitioners is in English, whereas, the victim is illiterate person. Further, she declined to get herself medically examined. Learned counsel for the petitioners made several submissions which fall within the arena of investigation and is not relevant at this stage.

Attention of the Court has been drawn to the communication dated 13.05.2022, issued by the SC Commission, addressed to the Director General of Police, Special Branch Lucknow, wherein, it has been specifically noted that pressure is being mounted upon the petitioners and their family to withdraw the cases and a false and fabricated crime case no. 108 of 2022, the impugned F.I.R. has been lodged. It is further noted that the complainant (mother of the petitioners), her daughter and family members apprehend threat to their life and property. Accordingly, SC Commission directed that the matter be taken in all earnest and seriousness, further, the delinquent officials be proceeded against in

departmental enquiry and action be taken under Section 4 of the Scheduled Castes and the Scheduled Tribes Act.

It is also relevant to take note of the fact that in the companion writ petition (Criminal Misc. Writ Petition No. 6978 of 2022) complainant of the impugned F.I.R. approached this Court seeking direction for fair investigation. In other words, petitioners in both the writ petitions pray for fair investigation, though from different investigating agencies. The Senior Superintendent of Police, Firozabad, has filed personal affidavit, wherein, in para 10 it is stated that on 09.06.2022, the Inspector General of Police, Agra Range, Agra, passed an order transferring the investigation from District Firozabad to District Agra. In para 11, it is stated that pursuant thereof, the Senior Superintendent of Police, Agra, constituted a Team of Crime Branch on 20.08.2022, to enquire into the matter and the details of the investigation.

It is further stated that the I.O. suspected a number of accused persons, further, attempts were being made to arrest them. It is further submitted that non bailable warrant has been issued against the petitioners, proceedings under section 82/83 Cr.P.C. has been initiated, further, it is alleged that petitioners are absconding. It is further stated that attempts are being made to conclude the investigation.

In the back drop of the aforementioned facts, the petitioners in both the writ petitions seek fair investigation; 35 police personnel have been held guilty of being involved for lodging false cases and procuring manufactured evidence against the petitioners and their family, however, till date no action has been taken against those officials despite specific direction from the SC Commission. The learned State Counsel is unable to state as to whether disciplinary proceedings has been initiated against the delinquent police personnel.

The Supreme Court in **Dharam Pal Versus State of Haryana and others**¹, observed that the constitutional courts can direct for further

¹. (2016) 4 SCC 160

investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation.

Recently, the Single Bench of this Court in **Nikki Devi Versus State of U.P. and another (Application U/S 482 No. 20438 of 2022)** taking note of the directions of the Supreme Court in **State of West Bengal and others vs. The Committee for Protection of Democratic Rights, West Bengal and others²**, to protect the interest of Advocates, who are alleged to being victimised of false accusations merely on the ground that they are contesting the case on behalf of accused persons, directed that the matter be investigated by the C.B.I.

Having regard to the allegations made in the writ petition and the report of the Additional Superintendent of Police (Special Enquiry), Head Quarter Lucknow, it is evident that the police personnel of District Mathura, have been stage managing to lodge false cases against the family members of the petitioner of which notice has been taken by the National Human Rights Commission and SC Commission.

In the circumstance, on specific query, learned State Counsel for the State has no objection if the matter is transferred to the C.B.I. for a free and fair investigation.

Accordingly:

- (i). First respondent, Principal Secretary, Home, Government of U.P., Lucknow, is directed to transfer the investigation of Case Crime No. 108/2022, under sections 363, 366 I.P.C., Police Station Rasoolpur, District Firozabad, including, other related cases to the CBI, New Delhi.
- (ii). CBI shall register a case and proceed with the investigation.

2. 2019(3) SCC 571

(iii). The Senior Superintendent of Police, Agra, and the Investigating Officer of Case Crime No. 108/2022, are restrained from proceeding with the investigation and shall transfer all the related records of the case to the CBI.

List this matter on 09.11.2022.

On the said date, CBI shall apprise the Court of the progress in the matter.

Order Date :- 6.9.2022

K.K. Maurya