

Court No. - 81

Case :- MATTERS UNDER ARTICLE 227 No. - 6848 of 2023

Petitioner :- Smt. Manorama Singh

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

Counsel for Petitioner :- Upendra Kumar Pushkar

Counsel for Respondent :- G.A., Kamlesh Kumar Dwivedi

Hon'ble Mrs. Jyotsna Sharma, J.

1. Heard Sri Upendra Kumar Pushkar, learned counsel for the petitioner, Sri Kamlesh Kumar Dwivedi, learned counsel for the respondent nos. 3 and 4 and learned A.G.A. for the State are present.

2. This petition has been filed by the petitioner with prayer as below:

"A. To set aside the order dated 22.05.2023 passed by Learned Special Court SC/ST, District-Agra as in Case Crime No. 178 of 2023 under sections 323, 506, 354(kha) of I.P.C., 3(1)(da), 3(1)(dha) and 3(2)(va) SC/ST Act 1987 (Amendment 2015) at Police Station- New Agra, District- Agra on the application dated 22.05.2023 filed by (victim)/petitioner for recording her re-statement under section 164 of Cr.P.C. before video graphy has been rejected.

B. Issue a order or direction directing the Learned Special Court SC/ST, District-Agra to record the re-statement of Victim/petitioner before the videographi in Case Crime No. 178 of 2023 under sections 323, 506, 354(kha) of I.P.C., 3(1)(da), 3(1)(dha) and 3(2)(va) SC/ST Act 1987 (Amendment 2015) at Police Station- New Agra, District- Agra."

3.The relevant facts of the case are as below:-

The petitioner lodged an F.I.R. naming four persons including respondents 3 and 4 with the allegations that she was molested, disrobed and was put to mental, physical and economic exploitation. It is alleged in the F.I.R. that the opposite party no.3 had taken Rs. 1,50,000/- from her, giving her a false assurance for securing a job and now, his wife, father and brother have been threatening her and not letting her continue with her PhD course etc.

4. On the basis of this information, Crime No. 178 of 2023 under sections 323, 506, 354(kha) of I.P.C., 3(1)(da), 3(1)(dha) and 3(2)(va) SC/ST Act 1987 (Amendment 2015) at Police Station- New Agra, District- Agra, was registered and investigated upon. During the course of investigation, the statement of victim under Section 164 Cr.P.C. was recorded on 29.04.2023. Thereafter, her statement under Section 164 Cr.P.C. was recorded for the second time on 11.05.2023. The victim-first informant moved an application, almost 11 days after her second statement i.e. on 22.05.2023, saying that earlier statements were not correctly recorded. She said that the Magistrate did not write what was told by her, Therefore, her statement under section 164

Cr.P.C. may be recorded once again with a videography of the proceedings. This application was dismissed on 22.05.2023.

5. From the perusal of the counter affidavit, following further facts are revealed. Before the application was moved by the victim for recording of her statement a third time, the I.O. had moved another application for the same purpose. The C.J.M heard on this application and dismissed the same, vide order dated 16.05.2023. Paper no.60 is the copy of the order (dated 16.05.2023) passed by the Chief Judicial Magistrate, Agra.

6. From perusal of the facts as given in the counter affidavit as well as the copy of the order dated 16.05.2023, this is amply clear that the court rejected the application of the I.O., observing that the statement of the complainant have already been recorded two times earlier. On both the occasions, statements under section 164 Cr.P.C. were recorded by different judicial officers. Every time the victim threw similar allegations against the judicial officers, saying that they did not write what was actually told by her. The Chief Judicial Magistrate observed that it does not appeal to reason that both the officers were interested in pressurizing the victim and kept recording the wrong statements. The Chief Judicial Magistrate also observed that as the judicial officers had given a mandatory certificate that 'the statement' was given by her and recorded by them, hence, they cannot be questioned.

7. From the papers on record this has come to light that the petitioner, while moving this petition under Article 227, conveniently concealed the fact that earlier an application was moved by the I.O. for recording her statement for the third time and same was rejected.

8. There is nothing in law to prevent the I.O. from moving an application for recording of statement of the witness/victim under section 164 Cr.P.C. for the second time or so on. For certain good reasons, the statement under sections 164 Cr.P.C. can be recorded more than once. But that doesn't mean that victim or the I.O. can keep on giving such applications for recording of statements any number of times without any good cause. Doing so, will destroy the sanctity of such statements and in my view, shall frustrate the very purpose behind such statements. This is conceivable that there may be instances where some new fact may come to light during investigation and a second statement might become necessary. This is just to elaborate the point involved. In such circumstance, a second statement may be recorded. However, in case, such a practice is allowed to be routinized, without imposing necessary checks and balances, whole system shall crumble. In my view, if I.O. or the victim is given a free hand and things are left to their whims, the investigation may go haywire. The consequences can be far reaching. The system of law has to follow a discreet and prudent path. Any attempt to discredit the system must be foiled.

9. As far as veracity of the statements, the attending facts and circumstances, including the victim's refusal to put her signature etc. are concerned, same can appropriately be dealt with at the time of trial, if required. Incidentally, this may be noted that the victim shall have all the opportunity to place her side before the trial court concerned, in case, the accused persons are put to trial.

10. In my opinion there were no good reasons to record statement of the

victim for a third time. The court concerned rightly dismissed her application. My opinion is that the petitioner unsuccessfully tried to use the law as a tool in her hand. Such practice needs to be discouraged therefore, while dismissing this petition, I impose a cost of **Rs. 20,000/-** on the petitioner, which shall be deposited in favour of State by furnishing a demand draft within three weeks. In case of failure to do so, the Registry shall issue a recovery certificate to District Magistrate concerned, who shall take steps for recovery of the same, as arrears of land revenue. When the amount is deposited or recovered, the same shall be transferred in favour of State.

11. With the aforesaid direction, the present habeas corpus writ petition is **dismissed**.

Order Date :- 12.10.2023

Sumit Kumar