THE HIGH COURT OF JUDICATURE AT ALLAHABAD

SITTING AT LUCKNOW

Neutral Citation No. - 2024:AHC-LKO:20979

A.F.R.

Court No. - 27

Case :-CRIMINAL REVISION No. - 378 of 2021

Revisionist :-State of U.P.
Opposite Party :- Chief Judicial Magistrate Barabanki And Anr.
Counsel for Revisionist :-G.A.
Counsel for Opposite Party :- Dinesh Kumar,DharmendraSingh,KrishnaGopal

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Vinod Kumar Shahi, the learned Additional Advocate General assisted by Sri Anurag Verma, the learned A.G.A.-I appearing on behalf of the State - Revisionist, Sri Krishna Gopal, the learned Counsel for the opposite party no.2 and perused the records.

2. By means of the instant revision filed under Section 397/401 Cr.P.C. the State has challenged the validity of an order dated 17.02.2021, passed by learned Chief Judicial Magistrate, Barabanki (hereinafter referred to as 'the C.J.M.') in Case No.717 of 2021 - Ram Pratap Versus Anup Kumar Singh and others, whereby while deciding a protest application filed by the opposite party no.2 against a final report submitted by the Investigating Officer the learned trial court has not only accepted the protest application and rejected the final report and taken cognizance of offences under Sections 323, 504, 500 and 166 I.P.C. allegedly committed by the persons named in the F.I.R., but at the same time has taken cognizance of offence under Section 120-B I.P.C. against Megha Roopam - the then Chief Development Officer (hereinafter referred to as 'the C.D.O.'), Sri. Arvind

Chaturvedi – the then Superintendent of Police (hereinafter referred to as 'the S.P.') and Sri. Zaid Ahmad - the Investigating Officer/Sub-Inspector of Police (hereinafter referred to as 'the I.O.). Cognizance of offence under Section 166-A I.P.C. has also been taken against Sri. Prakash Chandra Sharma - the then Station House Officer (hereinafter referred to as 'the S.H.O.'). Copies of the order were directed to be sent to the Principal Secretary of Government of U. P. (without specifying the department) and to the District Magistrate for initiating departmental action against the then Chief Development officer, the then S.P. and the then S.H.O., Dewa, Barabanki for submitting a final report in the matter for giving wrongful benefit to the accused persons under a conspiracy and a copy was ordered to be sent to the S.P. for taking action against the S.H.O. for his omission to register a case regarding embezzlement of government money.

3. Briefly stated, the facts of the case are that the opposite party no. 2 had filed an application under Section 156 (3) Cr.P.C. against (i) Anup Kumar Singh, Block Development Officer (hereinafter referred to as 'the B.D.O.'), (ii) Beena, Village Panchayat Officer, alleging that the complainant is a former Village Pradhan. The complainant had given a complaint to the District Magistrate alleging that the work of construction of toilets was being carried out in the village against the prescribed standards. Thereupon an enquiry was conducted through the C.D.O., Barabanki and the Sub Divisional Magistrate, Nawabganj, District Barabanki and both the aforesaid officers had submitted reports containing different findings. The complainant on his own got an enquiry conducted by the Village Panchayat Officer and he gave an application to the Sub Divisional Magistrate, Nawabganj, Barabanki. The complainant had gone to some office on 05.08.2019 where the Village Development Officer was also present. Both the accused persons alleged that the complainant was a tout and this was the reason behind his making the complaints. When the complainant objected, the Block Development Officer Anup Kumar Singh slapped him and pushed him out of the office and the other co-accused person stated that she had seen many village pradhans like the complainant

and she asked him to go away else the consequence will not be good. The complainant stated that the use of word tout was intended to cause disrespect to the complainant, from which he suffered mental and physical agony.

4. On 04.08.2020 the C.J.M., Barabanki passed an order stating that from the facts, circumstances and documents available, the matter appears to be of embezzlement of public money, which prima facie appears to be a cognizable offence. The C.J.M. directed the S.H.O., Dewa, Barabanki to register a case against appropriate persons in appropriate sections and to submit a compliance report within seven days.

5. In furtherance of the aforesaid order dated 04.08.2020 passed by the C.J.M., F.I.R. No.326 of 2020 was registered in Police Station Dewa, Barabanki against (1) Anup Kumar Singh and (2) Beena, for offences under Sections 323, 504, 500 and 166 I.P.C., all of which are non-cognizable offence and no F.I.R. could have been registered under Section 154 Cr.P.C. in respect of non-cognizable offence(s).

6. After investigation, the Investigating Officer submitted a final report on 20.09.2020, stating that from the statement of the complainant, statements of some independent witnesses and from the report submitted by the C.D.O., Barabanki as well as the statement of one of the accused persons no offence was made out.

7. On 08.02.2021, the opposite party no. 2 filed a protest application against the final report, a certified copy whereof has been annexed with the revision. It bears the title – Application for rejecting the Final Report and Summoning the Accused Persons, and thereafter the words and figures ‘under sections 409/500/504/166/323 IPC’ have been added by hand and this interpolation has not been authenticated by the signature of the applicant or any person. Page 1 of the application does not bear the signature of any person and in this manner the complainant has the liberty to disown the contents of page 1 of the application at his sweet will.

8. It is stated in the application that he had lodged the report for embezzlement in construction of toilets, whereas there is absolutely no whisper of embezzlement in the application under Section 156 (3) Cr.P.C. The complainant alleged that the Investigating Officer has not recorded the statements of the persons who were present on the spot of occurrence and the offence under Section 409 I.P.C. was also made out against the accused persons. He stated that there were discrepancies in the enquiry report submitted by the C.D.O., Barabanki and Sub Divisional Magistrate, Nawabganj, Barabanki and that the Village Panchayat Officer has stated in her report that 511 toilets had been constructed whereas in the report submitted by the S.D.M. in furtherance of the application dated 24.06.2019 it was stated that 150 toilets were incomplete and 40 toilets had not been constructed.

9. The complainant further alleged that the Block Development Officer had stated in his report dated 22.07.2019 that the complainant was giving repetitive complaints for the reason of him being a tout, has damaged his reputation in the society and has defamed him. He alleged that the accused Anup Kumar Singh has made a wrong entry in lock book (*Sic* log-book). The complainant alleged that the accused persons had shown construction of 511 toilets on paper and misappropriate the entire amount whereas about 400 toilets had not been constructed in the village of the complainant.

10. While deciding the protest application, the learned C.J.M. held that the matter involved embezzlement of public money but the F.I.R. was registered only for offence of causing hurt, abusing and defaming the complainant. The Magistrate found that the administrative enquiry conducted by the C.D.O. after registration of the F.I.R. was interference in the criminal case after registration of the F.I.R., which was not proper. The court found that from the statement of the complainant recorded under Section 161 Cr.P.C. and other documentary evidence, it was apparent that illegalities were committed in construction of toilets and when the complainant made enquiry regarding it, he was beaten up, abused and disrespected.

Therefore, there was sufficient reason for taking cognizance of the offence under Sections 409, 323, 504, 500 I.P.C. against the named accused persons.

11. The learned counsel appearing on behalf of the opposite party no.2 raised a preliminary objection regarding *locus standi* of the State to file the instant revision when the impugned order has not been passed against the State. He has relied upon the a decision of a Single Judge Bench of the Hon'ble High Court of Madras in the case of **P. Ravindran Vs. State**: 2010 (3) CTC 73 = 2010 SCC OnLine Mad 1709, wherein it was held that: -

> *"29. It is a settled preposition of law that a criminal proceeding cannot be used as an instrument of wrecking a private vengeance either on political reason or otherwise by a third party to the criminal proceeding. .... Considering the vital legal aspects, in the light of the various rulings of the Honourable Supreme Court, I am of the view that the petitioner/third party to a criminal proceeding is not legally entitled to maintain criminal revision against discharge or acquittal recorded by the trial court, unless he is also an aggrieved person."*

12. The aforesaid decision of a Single Judge Bench of the Madras High Court is not a binding precedent. Moreover, it does not lay down any proposition of law which may apply to the facts of the present case.

13. Per contra, the learned Additional Government Advocate appearing on behalf of the State has submitted that the State has the responsibility to ensure prosecution of accused persons as also to protect its officers from frivolous prosecutions. He has placed reliance on a decision of the Hon'ble Supreme Court in **State of U.P. Versus Ram Swaroop**: (1974) 4 SCC 764, in which it was held that: -

> *"37. The locus standi of State Governments to file appeals in this Court against judgments or orders rendered in criminal matters, particularly those commenced otherwise than on private complaints, has been recognised over the years and for a valid reason. All crimes raise problems of law and order and some raise issues of public disorder. The effect of crime on the ordered growth of society is deleterious and the State Governments are entrusted with the enforcement and execution of laws directed against prevention and punishment of crimes. They have, therefore, a vital stake in criminal matters which explains why*

all public prosecutions are initiated in the name of the Government."

14. The allegation of the complainant in the application under Section 156 (3) Cr.P.C. was against the (i) Anup Kumar Singh, Block Development Officer, (ii) Beena, Village Panchayat Officer, alleging that the complainant is a former Village Pradhan. There was no allegation against the C.D.O., the Superintendent of Police, the S.H.O. or the Investigating Officer. Yet while allowing the protest petition filed against the final report submitted after investigation, the learned C.J.M. has taken cognizance of offences regarding which there was no factual averment and has summoned the C.D.O., the Superintendent of Police, the S.H.O. and the Investigating Officer for being tried without sanction of the State Government. The aforesaid persons summoned by the C.J.M. are public servants and, therefore, the State has an interest in protecting its officers from any frivolous prosecution launched without its sanction.

15. Therefore, I find no merit in the preliminary objection raised by the learned Counsel for the opposite party no. 2 regarding *locus standi* of the State Government and I hold that the State has the right to assail validity of the impugned order and I proceed to examine the revision on its merits.

16. The learned Additional Advocate General has submitted that the C.J.M. has no authority in law to take cognizance of offences allegedly committed by the C.D.O., the Superintendent of Police, the S.H.O. and the Sub-Inspector / Investigating Officer, all of whom are public servants, without a prior sanction for their prosecution granted by the Government. In support of this submission, he has placed reliance on the decision in the case of **Amod Kumar Kanth v. Assn. of Victim of Uphaar Tragedy**, 2023 SCC OnLine SC 578.

17. Section 197 Cr.P.C. provides as follows: -

*"**197. Prosecution of Judges and public servants**.—(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in*

the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction save as otherwise provided in the Lokpal and Lokayuktas Act, 2013—

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of Article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

Explanation.—For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under Section 166-A, Section 166-B, Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 370, Section 375, Section 376, Section 376-A, Section 376-AB, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB or Section 509 of the Indian Penal Code (45 of 1860).

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

** * *"*

18. The C.D.O. and the S.P.are public servants who are not removable from his office save by or with the sanction of the Government and undisputedly they have the protection of Section 197 Cr.P.C.

19. So far as the S.H.O. and the Investigating Officer are concerned it is to be noted that the State Government has issued a Notification No. 1841 (3)/VI-538-71 dated 30.01.1975, which reads as under: -

> *"Grih Vibhag (Police), Anubhag-9, Notification No. 1841 (3)/VI-538-71, dated January 30, 1975:-*
>
> *In exercise of the powers conferred by sub-section (3) of Section 197 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Governor is pleased to direct that the provisions of sub-section (2) of the aforesaid section shall apply to all members of the following forces of the State, charged with the maintenance of public order wherever they may be serving, namely: (i) U.P. Police Force (ii) U.P. Pradeshik Armed Constabulary"*

20. Therefore, there is a specific bar against taking cognizance of offences by any member of U. P. Police Force – including the S.H.O. and the Sub-Inspector - Investigating Officer, without previous sanction of the State Government.

21. The phrase "*any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty"* occurring in Section 197 (1) Cr.P.C. have been the subject matter of discussion in various precedents. In **Amod Kumar Kanth v. Assn. of Victim of Uphaar Tragedy** (Supra) it was held that: -

> ***"32.*** *Here we may notice one aspect. When the question arises as to whether an act or omission which constitutes an offence in law has been done in the discharge of official functions by a public servant and the matter is under a mist and it is not clear whether the act is traceable to the discharge of his official functions, the Court may in a given case tarry and allow the proceedings to go on. Materials will be placed before the Court which will make the position clear and a delayed decision on the question may be justified. However,* ***in a case where the act or the omission is indisputably traceable to the discharge of the official duty by the public servant, then for the Court to not accept the objection against cognizance being taken would clearly defeat the salutary purpose which underlies Section 197 of the Cr. P.C.*** *It all depends on the facts and therefore, would have to be decided on a case to case basis."*

(Emphasis supplied)

22. In **Gauri Shankar Prasad v. State of Bihar**, (2000) 5 SCC 15, it was held that: -

> *"7. Section 197 CrPC affords protection to a Judge or a magistrate or a public servant not removable from his office save by or with the sanction of the Government against any offence which is alleged to have been committed by him while acting or*

purporting to act in the discharge of his official duty. The protection is provided in the form that no court shall take cognizance of such offence except with the previous sanction of the Central Government or the State Government as the case may be. ***The object of the section is to save officials from vexatious proceedings against Judges, magistrates and public servants but it is no part of the policy to set an official above the common law. If he commits an offence not connected with his official duty he has no privilege. But if one of his official acts is alleged to be an offence, the State will not allow him to be prosecuted without its sanction. Section 197 embodies one of the exceptions to the general rules laid down in Section 190 CrPC, that any offence may be taken cognizance of by the Magistrates enumerated therein****. Before this section can be invoked in the case of a public servant two conditions must be satisfied i.e. (1) that the accused was a public servant who was removable from his office only with the sanction of the State Government or the Central Government; and (2) he must be accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty.*

8. What offences can be held to have been committed by a public servant while acting or purporting to act in the discharge of his official duties is a vexed question which has often troubled various courts including this Court. Broadly speaking, it has been indicated in various decisions of this Court that ***the alleged action constituting the offence said to have been committed by the public servant must have a reasonable and rational nexus with the official duties required to be discharged by such public servant****."*

(Emphasis supplied)

23. In **State of Orissa v. Ganesh Chandra Jew**, (2004) 8 SCC 40, the Hon'ble Supreme Court explained the underlying concept of protection under Section 197 and held as follows: -

"9…The section falls in the chapter dealing with conditions requisite for initiation of proceedings. That is, if the conditions mentioned are not made out or are absent then no prosecution can be set in motion. …. So far as public servants are concerned, the cognizance of any offence, by any court, is barred by Section 197 of the Code unless sanction is obtained from the appropriate authority, if the offence, alleged to have been committed, was in discharge of the official duty. The section not only specifies the persons to whom the protection is afforded but it also specifies the conditions and circumstances in which it shall be available and the effect in law if the conditions are satisfied. ***The***

> ***mandatory character of the protection afforded to a public servant is brought out by the expression "no court shall take cognizance of such offence except with the previous sanction". Use of the words "no" and "shall" makes it abundantly clear that the bar on the exercise of power by the court to take cognizance of any offence is absolute and complete. The very cognizance is barred****. That is, the complaint cannot be taken notice of. According to Black's Law Dictionary the word "cognizance" means "jurisdiction" or "the exercise of jurisdiction" or "power to try and determine causes". In common parlance it means taking notice of. A court, therefore, is precluded from entertaining a complaint or taking notice of it or exercising jurisdiction if it is in respect of a public servant who is accused of an offence alleged to have been committed during discharge of his official duty."*
>
> (Emphasis supplied)

24. The learned C.J.M. has found that the administrative enquiry conducted by the C.D.O. after registration of the F.I.R. was interference in the criminal case after registration of the F.I.R., which was not proper. However, this administrative enquiry was conducted by the C.D.O. in discharge of his official duty. The C.D.O. had sent the report to the Superintendent of Police, who forwarded the same to the S.H.O. in discharge of his official duty. The investigating officer took into consideration S.H.O. had also acted as per the instructions of his superior officer, i.e. the Superintendent of Police, in discharge of his official duty. Megha Roopam - the then C.D.O., Sri. Arvind Chaturvedi – the then S.P.and Sri. Zaid Ahmad - the Investigating Officer/Sub-Inspector of Police. Cognizance of offence under Section 166-A I.P.C. has also been taken against Sri. Prakash Chandra Sharma - the then S.H.O.

25. Therefore, all the aforesaid persons have acted in discharge of their official duty while committing the alleged offending acts and the cognizance of the act committed by them, even if it amounts to an offence, cannot be taken without previous sanction of the Government.

26. Therefore, the impugned order dated 17.02.2021 passed by the C.J.M. taking cognizance of offence allegedly committed by the C.D.O., the

Superintendent of Police, in discharge of their official duty, is unsustainable in law.

27. The C.J.M. found that from the statement of the complainant recorded under Section 161 Cr.P.C. and other documentary evidence, it was apparent that illegalities were committed in construction of toilets and when the complainant made enquiry regarding it, he was beaten up, abused and disrespected and that there was sufficient reason for taking cognizance of the offence under Sections 409, 323, 504, 500, 166 I.P.C. against the named accused persons.

28. Section 409 I.P.C. provides punishment for the offence of Criminal breach of trust by public servant, or by banker, merchant or agent. Criminal breach of trust is defined in Section 405 I.P.C. as follows: -

> ***"405. Criminal breach of trust.****—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".*

* * *

29. The C.J.M. has not recorded any prima facie satisfaction regarding the role of the Block Development Officer and the Village Panchayat Officer in construction of toilets. For taking cognizance of the offence under Section 409 I.P.C. or for any other offences there should be a specific allegation of commission of some act which prima facie make out commission of the alleged offence. There appears to be absolutely no factual allegation made in the complaint or in the protest petition and no material to prima facie establish 'entrustment' of any property to any of the accused persons or to the effect that any of them have dishonestly misappropriated or converted to his own use that property, or has dishonestly used or disposed of that property in violation of any direction of law. Merely because the accused persons were holding some office, they cannot be tried for commission of any offence

without any specific allegation of commission of any act on their part make out the ingredients of the offence.

30. The C.J.M. has taken cognizance of the offences under Section 190 (1) (b) Cr.P.C., which provides as follows: -

> ***190. Cognizance of offences by Magistrates****.— (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence —*
>
> *(a) upon receiving a complaint of facts which constitute such offence;*
>
> ***(b) upon a police report of such facts****;*
>
> *(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.*
>
> *(2) ...”*

31. The police report submitted in this case mentioned that no offence took place and no such fact has been stated in the police report as may make out cognizance of any offence. In absence of the police having reported such facts, as make out commission of any offence, the C.J.M. could not have taken cognizance of any offence under Section 190 (1) (b) Cr.P.C. The order taking cognizance of offence under Section 190 (1) (b) Cr.P.C. is bad in law for this reason.

32. The report dated 20.08.2020 submitted by the C.D.O. to the S.P., which was annexed with the police report, stated that the B.D.O. had submitted a report stating that the complainant claims himself to be a former village pradhan whereas in the letter dated 14.06.2019, the complainant has claimed himself to be the husband of a former village pradhan, which contentions are self contradictory and misleading. Regarding the complaint that toilets had not been constructed, the B.D.O. informed that the complainant’s complaint dated 17.06.2019 was uploaded on IGRS Portal on 18.06.2019 and an enquiry was conducted by the District Panchayat Raj Officer and the enquiry report dated 17.07.2019 was also uploaded on the portal, as per which out of total 511 toilets, 421 had been constructed and the incentive for construction of the remaining private toilets had been paid to the

beneficiaries. As per the report of the S.D.M., 150 toilets had not been finished and work had not commenced on 40 toilets, although the date of enquiry conducted by the S.D.M. is not available on record. The Village Panchayat Secretary Ms. Beena had produced the digital diary of each of the toilets alongwith its beneficiary, which established that all the toilets had been completed.

33. Regarding the incident of beating and abusing etc. that allegedly occurred on 05.08.2019, the B.D.O. had produced a copy of the log-block of his official vehicle to prove that he had not gone to Dewa on the date of the alleged incident and he was present in Development Block Harakh. Regarding the report that alleged that the complainant was a tout, it was stated that the said report did not bear the signature of the B.D.O. and it was not issued under his authority.

34. It is significant to note that in the entire application under Section 156 (3) Cr.P.C., there was no mention of any embezzlement of public money and the only allegation was that there was some discrepancy in two reports submitted by two different officers, but the discrepancy in the reports was not specifically mentioned in the application. The findings of the reports or the discrepancies in the reports were not mentioned in the order. The findings of the report dated 20.08.2020 submitted by the C.D.O. have been mentioned above. The date of the report of the S.D.M. is not available on record and there is a possibility that the two reports mention the situation existing on two different points on time. Besides stating that the matter involves embezzlement of public money, there are no particulars in the order as to who has committed the embezzlement of public money and in what manner.

35. Neither the application under Section 156 (3) Cr.P.C. made a mention of any specific offence committed by the accused persons, nor any specific offence were mentioned in the order dated 04.08.2020, passed by the C.J.M., Barabanki.

36. Therefore, there was absolutely no material before the C.J.M. justifying cognizance of any offence under Section 190 (1) (b) Cr.P.C. Criminal

prosecution cannot be initiated merely on an assumption that an offence has been committed, but the Magistrate has to arrive at a prima facie satisfaction from a complaint of facts which constitute such offence or from a police report of such facts or by an information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. In the present case, no such material was available before the C.J.M. as would warrant taking cognizance of any offence. In case the C.J.M. was not satisfied with the police report, he could only have passed an order for further investigation regarding the allegations.

37. Moreover, the offences punishable under Sections 323, 504 and 500 I.P.C. are non-cognizable offences and a trial in respect of those offences can only be instituted and continued as such and only a complaint can be registered in respect of those offences. The trial Court has acted illegally in directing trial of the accused persons for the aforesaid offences as a state case.

38. It appears that the Magistrate has passed the impugned order having been swayed by the impression created by the complainant that some illegalities had been committed in construction of toilets. However, every dereliction of duty would not make out a case of trial, unless the essential conditions for initiating the trial are fulfilled and the C.J.M. has not taken care to examine whether the essential ingredients of the offence and other prerequisites for taking cognizance are fulfilled or not.

39. The C.J.M. has summoned the S.H.O. to face trial for the offence under Section 166-A I.P.C. for his failure to register F.I.R. under Section 409 I.P.C. which reads as under: -

> *"**166-A. Public servant disobeying direction under law.**— Whoever, being a public servant,—*
>
> *(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or*
>
> *(b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or*

(c) fails to record any information given to him under sub-section (1) of Section 154 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to cognizable offence punishable under Section 326-A, Section 326-B, Section 354, Section 354-B, Section 370, Section 370-A, Section 376, Section 376-A, Section 376-AB, Section 376-B, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB], Section 376-E or Section 509,

shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine."

40. The S.H.O. had registered the F.I.R. and had entrusted investigation to the Investigating Officer, who conducted investigation and found that the offences alleged was not made out. The investigation was carried out in compliance of the order passed by the Magistrate, although that order was not in accordance with law as it had directed investigation by the police without recording a prima facie satisfaction that a cognizable offence had been committed warranting investigation by the police. The S.H.O. obeyed the order of the C.J.M. concerned, registered a case and got the same investigated. Merely because the court is not convinced with the findings of the S.H.O. it cannot be said that the S.H.O. has not obeyed direction of the C.J.M., although it was not in accordance with law.

41. Failure to register an F.I.R. is an offence under Section 166-A I.P.C. only if the report was regarding commission of offences under Section 326-A, Section 326-B, Section 354, Section 354-B, Section 370, Section 370-A, Section 376, Section 376-A, Section 376-AB, Section 376-B, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB], Section 376-E or Section 509. Failure to register F.I.R. for offence under Section 409 would not be an offence under Section 166-A, I.P.C.

42. In view of the aforesaid discussions, the impugned order dated 17.10.2021 passed by the C.J.M. suffers from patent illegalities and it is unsustainable in law. The continuance of prosecution on the basis of such an order would clearly be an abuse of the process of law, warranting interference by this Court in exercise of its revisional powers.

43. Accordingly, the revision is **allowed**. The impugned order dated 17.02.2021, passed by learned C.J.M., Barabanki in Case No.717 of 2021 - Ram Pratap Versus Anup Kumar Singh and others, is hereby **set aside**.

(Subhash Vidyarthi J)

Order Date : 07.03.2024
Ram.