

Court No. - 9

Case :- CRIMINAL MISC. WRIT PETITION No. - 2447 of 2024

Petitioner :- Kushma

Respondent :- State Of U.P. Thru. Prin. Secy. Home U.P. Lko. And Others

Counsel for Petitioner :- Ram Kewal Tripathi

Counsel for Respondent :- G.A.

Hon'ble Vivek Chaudhary,J.

Hon'ble Narendra Kumar Johari,J.

Learned counsel for the petitioner and learned A.G.A. for the State/opposite parties are present.

In compliance of the order dated 30.05.2024, learned A.G.A. has produced before this Court letter of Additional Chief Secretary (Home Department), Government of U.P., which was sent to learned Government Advocate, which is taken on record.

On 30.05.2024, this court passed following order in the matter :-

"1. Learned Government Advocate has filed an affidavit containing the report of the matter and also a short counter affidavit bringing on record the status of the investigation. Both the affidavits are taken on record.

2. Heard learned counsel for petitioner and learned Government Advocate for State.

3. Present writ petition is filed by the petitioner for the following primary relief:-

"i. Issue a writ order or direction in the nature of mandamus thereby commanding the opposite party No.2 to transfer the investigation from Police Station-Gaindas Bujurg, District-Balrampur to another Police Station or independent investigating agency like CBI etc. for fair and proper investigation in Fir No.0029/2024, u/s 447, 120B, 306 IPC & 3(2)(V) SC/ST Act Police Station-Gaindas Bujurg, District-Balrampur.

ii. Issue a writ, order or direction in the nature of MANDAMUS there by commanding to the opposite party No.2 and 3 to conduct the investigation in a fair and proper manner and take the necessary action against the opposite party No.4 to 10."

4. The allegations in the present writ petition are that land of Sri Ram Bujharat was unauthorizedly occupied by police persons in connivance with the revenue officials for the purposes of building residential accommodation of Police Station, Gaindas Bujurg. He tried his best to lodge the complain for proper action but no action was taken and in the given circumstances, Sri Ram Bujharat set himself on fire on 24.10.2023 in front of the Police Station Gaindas Bujurg, District Balrampur. Thereafter late Sri Ram Bujharat remained in hospital under treatment and expired on 30.10.2023. Though, the police itself was expected to lodge F.I.R., as it was an unnatural death, but, no action was taken and therefore an application under Section 156(3) Cr.P.C. was filed on 22.11.2023 before the Chief Judicial Magistrate, Balrampur for lodging of F.I.R. The said application also remained pending for long and therefore, a Criminal Mis. Writ petition No. 173 of 2024; 'Kushma Vs. State of U.P. and Others' was filed before this Court and on 11.01.2024 this Court directed the C.J.M. Balrampur to decide the aforesaid application within the next two months. In furtherance thereto, the C.J.M. passed the order on 01.03.2024 and F.I.R. was lodged on 17.03.2024. It appears that thereafter also investigation was not being conducted properly by the C.O. Utraula who was the initial Investigating Officer and, thus, present writ petition was filed. Thereafter by an order dated 15.04.2024 the investigation is transferred to C.O. Kaiserganj, Bahraich.

5. Learned counsel for petitioner submits that allegations are against revenue and police officials and therefore the police is purposefully not investigating the matter properly. Though, the incident occurred on 24.10.2023 but till date no effective investigation has taken place. Even now, in short counter affidavit filed today, the sole annexure filed is, a letter dated 28.05.2024, sent to the hospital concerned where the victim Ram Bujharat was admitted, to provide his record. It shows that the police is not taking any steps to conduct a fair and proper investigation in the matter. It is further stated that though the victim remained alive for nearly six days, however there is no reference of recording of any dying declaration of the victim. Therefore, the prayer in the given circumstances is that a fair and proper investigation is not possible in the manner in which it is being conducted at present.

6. At this stage, learned Government Advocate submits that police is making its best effort to make fair and proper investigation and it has no personal interest in the matter. Further the State is open to investigate the matter under the supervision of appropriate administrative authority including senior police officers and it also desires that the matter should

be investigated properly.

7. The Court is not satisfied with the manner in which investigation is ignored in the present matter.

8. Learned Government Advocate states that at present General Elections of Lok Sabha, 2024 is going on, result of which would be declared on 04.06.2024. Therefore, he prays that sufficient time may be granted for constitution of SIT.

9. In the given circumstances, the Additional Chief Secretary (Home), Government of U.P. is directed to suggest the names of senior police officers for constitution of SIT having adequate expertise in such matters for investigation in the matter including the name of one officer not below the rank of Inspector General of Police who will be heading the said SIT on or before 12.06.2024 and communicate to this Court.

10. Put up this case on 12.06.2024."

In compliance of the above order, the Additional Chief Secretary (Home Department), Government of U.P. has sent the names of 06 police officers as well as 03 other officers, who are posted and working in the revenue department. We have considered the names of the officers suggested by the Additional Chief Secretary (Home Department), Government of U.P.

Taking into consideration the seriousness of the offence, opposite party No.1 is directed to constitute Special Investigating Team (SIT) including the officers Smt. Manjil Saini, Inspector General of Police (Vigilance Establishment, Lucknow), Shri Radhey Shyam Rai, Additional Superintendent of Police, Gonda and Shri Gaurav Ranjan Srivastava, Additional District Magistrate (Finance and Revenue), Bahraich. The senior most officer shall be the head of the Special Investigating Team (SIT) and other two officers shall be its members. The Special Investigating Team (SIT) will investigate and probe the matter and will submit its report in a sealed envelop within a period of six weeks from today.

List this case in first week of August, 2024.

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(Narendra Kumar Johari,J.) (Vivek Chaudhary,J.)

Order Date :- 14.6.2024

ML/-