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Reserved

Court No. - 13

Case :- APPLICATION U/S 482 No. - 8877 of 2023

Applicant :- Israr Ahmad
Opposite Party :- State Of U.P. Thru. Addl. Prin. Secy. Home Deptt. Civil Sectt. Lko. And Another
Counsel for Applicant :- Gyanendra Singh,Ajmal Khan,Javed Khan
Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh,J.

1. Heard Shri Gyanendra Singh, learned counsel for the applicant, Dr. V.K. Singh, learned Government Advocate assisted by Shri Piyush Singh, learned A.G.A., Shri Shivendra Singh Rathaur, learned State Law Officer

2. In pursuance of earlier order dated 12.12.2023, Shri Satyapal Antil, Superintendent of Police, Pratapgarh is also present before this Court.

3. Present application has been moved by the applicant for quashing the summoning order dated 22.01.2021 passed by C.J.M., Pratapgarh and charge sheet dated 15.03.2020 in Case Crime No.1019 of 2019 U/S 332, 353, 504, 447, 153B I.P.C. and Section 7 of Criminal Law Amendment Act, P.S. Kotwali Nagar, District- Pratapgarh as well as further proceedings of Criminal Case No.2186 of 2021, State Vs Israr Ahmad and Ors.

4. Learned counsel for the applicant submitted that the impugned proceeding was initiated on the basis of concocted facts and the charge sheet was submitted by the Investigating Officer in the most mechanical manner under Sections 332, 353, 504, 447, 153B I.P.C. and Section 7 of Criminal Law Amendment Act, 1932, (for short "Act, 1932). He further submitted that provisions of Act, 1932 are not applicable in district Pratapgarh as there is no notification related to the implementation of the aforesaid Act. He further submitted that no sanction order was obtained from the Competent Authority before filing of the aforesaid charge sheet for the offence under Section 153B I.P.C., which is mandatory, on which the trial court has taken cognizance without considering this fact that neither the sanction was obtained from the Competent Authority nor the provisions of Act, 1932 are applicable in the district in question. He vehemently submitted that it was obligatory on the part of the Magistrate to pass a reasoned order at the time of taking cognizance.

5. Learned counsel for the applicant submitted that the F.I.R. of case in question was lodged by the informant, namely, Shri Shailendra Singh, Reserved Inspector, Police Line, P.S. Kotwali City, District- Pratapgarh on 29.11.2019 at 22:13 hours with the allegation that on 29.11.2019, at about 12:00 Noon, when he was working as Reserved Inspector, Police Line, Pratapgarh and

was doing his day-to-day work in his office and adequate police security was deployed at the main gate of the police line as well as at different picket points in the police line and there was standing order that no any private person would be allowed to enter into the police line without adequate permission. However, on the said date, Israr Ahmad S/o Hassan Mohammad, R/o Sarauli, P.S. Khohandaur, District- Pratapgarh, Jafrul Hassan, R/o Dahilamau, P.S.- Kotwali City, District- Pratapgarh, Sujjat Ulla, S/o Mobeen, R/o Rajapur, Mufreed, P.S. Kandhai, District- Pratapgarh, all leaders of the AIMIM Party, as well as other active members of aforesaid party forcibly tried to enter into the police line, when the guard tried to stop them and the information was also flashed, the informant along with his companion officer Major Prem Narayan Mishra and other police personnel immediately came to the main gate, but the aforesaid persons and some unknown persons tried to start skirmish with the police personnel and while interrupting in the duty of police personnel and forcibly entered into the police line campus by saying that they are the members of Islamic Organization, namely AIMIM and they would perform Namaz in the Mosque situated in the premises of the police line. Thereafter, extra force was deployed then all the aforesaid persons went away.

6. Learned counsel for the applicant submitted that during the

course of investigation, statements of informant as well as other witnesses were recorded under Section 161 Cr.P.C. who are police personnel. He further submitted that as per the provisions of Section 7 of Act, 1932, a report must be submitted by the officer-in-charge of a police station, but in the present case, the Officer, who submitted the police report/charge sheet, is not the officer-in-charge. He also submitted that the Superintendent of Police, Pratagparh has ordered for further investigation in the present case only with the intention to fill up the lacuna of the prosecution related to the sanction. He next submitted that since long time, the people working nearby the police line are offering Namaz in the mosque situated in the police line campus by taking necessary precautions. He vehemently submitted that, as appropriate sanction was not obtained, the entire proceedings are liable to be set aside.

7. Learned counsel for the applicant, in support of his argument, relied upon judgments of Hon'ble Apex Court in the cases of ***State of Haryana & Ors. Vs. Bhajan Lal*** reported in ***Supp (1) SCC 335, Vikram Johar Vs. State of Uttar Pradesh and Anr.*** reported in ***2019 (14) SCC 207, Manoj Rai & Ors. Vs. State of M.P.*** reported in ***(1999) 1 SCC 728, Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi & Ors.*** reported in ***AIR 1976 SC 1947, State of Gujarat Vs. Girish Radhakrishnan Varde*** reported in ***(2014) 3 SCC 659,***

Babubhai Vs. State of Gujarat reported in ***(2011) 1 SCC (Crl) 336,*** **Madhavrao Jiwajirao Scindia and Ors. Vs. Sambharao Chandrojirao Angre and Ors.** reported in **(1988) 1 SCC 692,** ***Dilawar Babu Kurane Vs. State of Maharashtra*** reported in ***2002 (2) SCC 135*** as well as decision of Hon'ble Bombay High Court in ***Subhash Mishrilal Jain Vs. Laxman Kondiba Aswar*** reported in ***AIR OnLine 2021 BOM 4194.***

8. Learned counsel for the applicant lastly relying on the decision of Hon'ble Allahabad High Court in the case of ***Ataulla & Anr. Vs. Azim-Ullah & Anr.*** reported in ***1889 SCC OnLine All 38*** submitted that a mosque to be a mosque at all must be a building dedicated to God and not a building dedicated to God with a reservation and in case, the mosque is situated in the police line then the people should not be deprived of offering the prayer of Jumma in the said mosque.

9. Learned A.G.A. vehemently opposed the prayer of applicant and submitted that the mosque constructed in the police line premises cannot be allowed to public for offering Namaz/prayer, for the reason that arms and ammunition of the police personnel are being stored in Armory in the police line, moreover, District Wireless Control Room is also situated there and due to several other security reasons, without appropriate permission, public at large cannot be allowed to enter in the police line campus. He further submitted that as per the

prosecution case, regularly, the Guards are being deployed on the gates of the police line and only with the permission of the guard, the persons are being allowed to enter into the premises. However, on the date of incident, the accused persons forcibly tried to enter into the police line by raising several slogans and also making skirmish with the police personnel and immediately, the Guard informed to the senior officials, on which, Reserved Inspector, Police Line came to the spot along with other police personnel, but the accused persons misbehaved with them and entered into the campus of the police line, challenging the police personnel that they would offer Namaz in the mosque situated in the police line campus, as a result, law and order was disturbed, thereafter, the extra force was called and deployed, on which, the accused persons ran away.

10. Learned A.G.A. also submitted that merely on the ground that there was no independent witness at the place of incident, charge sheet cannot be quashed. He further drew attention of the Court on the Gazette Notification No.II-2568-CX-68 dated 19.06.1968 which clearly provides that His Excellency, Hon'ble Governor was pleased to direct in suppression of the previous notification on the subject that the provisions of Section 7 of Act, 1932 shall come into force in all districts of U.P. with effect from the date of publication of the Notification. In such

circumstances, the argument of learned counsel for the applicant that the provisions of Act, 1932 are not applicable in District- Pratapgarh is baseless.

11. Learned A.G.A. next submitted that in the radius of 6km of police line, 60 mosques are situated and the mosque which is situated in the police line is not allowed for civilians due to security reasons, the Superintendent of Police, Pratapgarh has also taken decision for further investigation, therefore, entire charge sheet cannot be quashed merely on the ground that the sanction was not obtained for Section 153 A IPC. He lastly submitted that during the pendency of the trial, sanction order can be placed before the trial court, therefore, charge sheet as well as summoning order cannot be quashed.

12. Mr. Satypal Antil, Superintendent of Police, Pratapgarh also informed that the campus of police line is a sensitive place in which Armory, District Wireless Control Room and Cyber Control Room etc. are situated and the accused persons forcibly entered into the campus of police line by interrupting the official duty of police personnel. He also informed that further investigation will be completed very soon and report be submitted in Court.

13. Considering the submissions of learned counsel for the applicant and learned A.G.A., going through the contents of

application, statement of victim recorded under Section 161 Cr.P.C. as well as other relevant documents, it is evident from the pleading that by way of Gazette Notification dated 19.06.1968, the provisions of Section 7 of Act, 1932 are applicable in all districts of Uttar Pradesh with effect from the date of publication of the notification in the Official Gazette, and as the same has already been published in the Official Gazette on 19.06.1968, therefore, the ground of applicant that the provisions of Act, 1932 is not applicable in the District Pratapgarh has no legs to stand.

14. It is further evident from the provisions of Act, 1932 read with the provisions of Cr.P.C. that the investigation of the case in question was conducted by Sub-Inspector, Chandra Shekhar Singh and prepared the report which was approved by Shri Surendra Nath Singh, Inpector at the time of forwarding to the concerned Court. It is also admitted by the learned counsel for the applicant that the Inspectors are being appointed as SHO and in the present case, the Inspector has approved the charge sheet, therefore, the ground argued by the learned counsel for the applicant that the charge sheet was not forwarded by the S.H.O. is also irrelevant. It is also evident from the pleading filed by the learned A.G.A. that the Superintendent of Police, Pratapgarh has decided for further investigation of the case in question, and he himself informed to this Court that he will take

all care and precautions for further investigation of the case in question in just and fair manner. In such circumstances, merely on the ground that the sanction was not taken by the Investigating Officer from the competent authority and submitted charge sheet to the Court concerned, on which, Court has taken cognizance, charge sheet as well as cognizance order cannot be said to be bad in the eyes of law, therefore, this Court is of the view that the present application is misconceived and liable to be dismissed. Moreover, this Court is also of the view that the campus of police line is a sensitive place where Armory, District Wireless Control Room and Cyber Control Room, etc. are situated, therefore, public at large should not be allowed in the premises without valid permission of Superintendent of Police of the District.

15. In view of the above, the present application stands **dismissed.**

16. Superintendent of Police, Pratapgarh is directed to ensure that the further investigation of the case in question be completed as early as possible and submit a report before the Court concerned.

17. Senior Registrar of this Court is directed to communicate this order to Principal Secretary, Government of U.P. and Superintendent of Police, Pratapgarh for necessary action,

forthwith.

Order Date :- 7.2.2024/V. Sinha