

Court No. - 68

Case :- APPLICATION U/S 482 No. - 3253 of 2023

Applicant :- Rajesh Kumar

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Jay Prakash Yadav

Counsel for Opposite Party :- G.A.,Nishant Kumar

Hon'ble Mrs. Manju Rani Chauhan,J.

1. Heard Sri Jay Prakash Yadav, learned counsel for the applicant, Mr. Nishant Kumar, learned counsel for the opposite party no.2 and Mr. K.P. Pathak, learned A.G.A. for the State.
2. The present application U/s 482 Cr.P.C. has been filed to quash the impugned order dated 16.12.2022 passed by the learned Additional Principal Judge, Family Court, Court No.5, Ghaziabad in Case No.192 of 2020¹, under Section 125 Cr.P.C., Police Station - Kotwali Nagar, District-Ghaziabad, by which the monthly maintenance allowance at the rate of Rs. 2,000/- has been awarded to the opposite party no.2 from the date of her application.
3. In compliance of earlier order of this Court dated 29.03.2023, the applicant, namely, Rajesh Kumar is present before this Court alongwith his children, namely, Dipesh Kunal (son) and Anshika (daughter), who have been identified and their Counsel have attested their signatures on the order-sheet. The opposite party no.2, namely, Smt. Kavita is also present alongwith her brother, namely, Manoj Kumar, who has been identified and their signatures have also been attested by her counsel.
4. The Court tried to mediate between the parties in the presence of their counsel, but no conclusion could be arrived at, therefore, in view of the statement made by the applicant that though he was earning some money by tailoring but due to pandemic of Covid-19 in March, 2020, he is suffering from ailment and is not earning any money till date. He has given few rooms of his house on rent by which he is taking care of his

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children, who are staying with him. Keeping in mind the aforesaid situation, the money awarded to be paid is excessive, therefore, it will be very difficult for him to meet out and to comply with the directions issued in order impugned.

5. In view of the above, the applicant is directed to pay towards monthly maintenance allowance @ Rs.1,000/- per month to the opposite party no.2 (wife) on or before 25th day of each calendar month, from April, 2023, onwards. The rest of the arrears of amount accrued between the date of application under Section 125 Cr.P.C. and the date of this order shall remain kept in abeyance during the pendency of this application or till further orders by this Court in that regard.

6. List this case on **19th April, 2023** for further hearing.

7. Subject to aforesaid compliance being made, no coercive measure shall be taken against the applicant till the next date of listing. It is clarified that in case the applicant fails to comply with the condition, this interim order shall be deemed to have been vacated automatically. In the meantime, learned counsel for the opposite parties may file their counter affidavit.

8. After passing of aforesaid order, Mr. Nishant Kumar, learned counsel for the opposite party no.2 has placed some documents showing that the police official – Sri Vibhor Kumar Singh, Sub-Inspector, Mobile No.9897926206 has taken Five Thousand Five Hundred Rupees from opposite no.2 (in two transactions, i.e. Rs.5,400/- and Rs.100/- through e-mode) from the opposite party no.2 causing harassment, whereas he was not authorized to do so. The said documents passed on to the Court today, are kept on record.

9. This Court is astonished to hear about the conduct of the police officer, who is expected to protect the person in need and it is the Sub-Inspector, who took money from the opposite party no.2 to ensure

presence before this Court. Unscrupulous functions of some responsible police authorities are being experienced in numerous cases, which has not only diminished the faith of public but is now showing the heft of dareness asking bribery from the victim through UPI transfer modes, for ensuring presence before this Court. Experiencing, inhuman behavior of State Police, the Court has observed about the conduct of police officers in some of the cases. Excerpts of two such orders passed in are being reproduced herein below:-

Order dated 06.02.2023 passed in Criminal Misc. Anticipatory Bail Application U/s 438 Cr.P.C. No. 5397 of 2020².

"Submission germane to the matter is that husband and father-in-law of the deceased have already been acquitted by the court below. To substantiate the said fact, learned counsel appearing for the applicant passed on a certified copy of the acquittal order, which has been returned to him, after perusal. Applicant before this Court is mother-in-law of the deceased.

Acquittal of two accused persons by court below and interim protection to applicant by this Court in the offence under Sections 498A, 304-B, 201 IPC and 3/4 D.P. Act required attention of this Court to traverse to the pleadings of both anticipatory bail as well as counter affidavit closely to reach at a final conclusion in applicant's matter.

Bare perusal of reply given to the averments of anticipatory bail application in counter affidavit appears to be perfunctory and cavalier in manner as also bereft of any cogent or coherent factual and legal foundation as the Government Counsel Sri I.P.S. Rajpoot, AGA-I, (AOR-A/I-0034/2012) who drafted the affidavit did not hesitate in proving the applicant to be of criminal mind without adducing any substance in support thereof. Excerpt of the averments in paragraph - 10 of counter affidavit says "लेकिन प्रार्थिनी अभियुक्ता अपराधिक प्रवृत्ति की महिला है". Though no document is annexed. Remaining reply in entire counter affidavit rests on denial to each fact mentioned in anticipatory bail application. Contents of counter affidavit reflects the impetuosity of Government Counsel as well as the deponent where each fact is negated sans due care constricting the role of the applicant as per their whims. This Court cannot turn a blind eye to such imprecise conduct of the deponent as well as learned Government Counsel brought in the counter affidavit. The reply quietly appears to be a transcription of parawise narratives sent by the concerned department. Surprisingly, most of the paragraphs i.e. paragraph Nos. 3 to

2 Smt. Chantara v. State of U.P.

12 of the counter affidavit are sworn to be verified on the basis of record, however, nothing is brought on record in support thereof.

It is a staggering irony that deponent of counter affidavit, who is Deputy Superintendent of Police/ Circle Officer, Sahawar, District Kasganj, believed himself to be empowered with sanction to author a certificate of propensity of a person without any cogent material. Since 75th Independence Day Celebrations, Government has marked Azadi-ka-Amrit Mahotsav terming it to be 'Amrit Kaal' with prospective vision in welfare of citizens of the country, however, Police Administration feels more comfortable to remain with colonial structure. Such attitude of functionaries who are instrumental to safeguard the public at large diminishes the ingrained belief over the System and plays a role in impeding the goal set out to ascend to new heights of prosperity.

A bare reading of the averments in counter affidavit whereby the applicant is said to be of criminal intent appears to be on the basis of skewed information. No such officer is allowed to enjoy impunity on the pretext of discharging official functioning nor can be set free to form an audacious remark without any basis. It is the prime duty of the concerned A.G.A. also who drafts counter affidavit to acquire the material relying on which the averments being made in counter affidavit.”

Order dated 12.04.2023 passed in Application U/s 482 No. 4619 of 2023³.

2. In compliance of earlier order of this Court dated 10.04.2023, Mr. Santosh Kumar Mishra, Superintendent of Police, Mirzapur is present before this Court. His personal affidavit, duly signed by learned AGA, is taken on record. The personal affidavit enumerates the actions being taken on the apology letters submitted by erring officials namely, Inspector Ashok Kumar and Sub-Inspector Shivji Singh Yadav, who are also present before this Court. It has also been averred therein that a preliminary inquiry is being conducted against said officers.

3. The matter, in hand, is a glaring example of highhandedness of police officers to the rank of Inspector and Sub-Inspector whom a common man believes to be the nearest authority to safeguard his/her life and liberty. However, the merciless conduct of police officers renders to the applicants a silent curse being the part of so called advanced and developed society, where a bereaved family, on the loss of life of its family member, is charged with allegations by some unrestrained Police Officers, because of their agitation against the failure of the administrative wings. Manner in which police officers discharge their duties, they behave as a masters of a common man's fortune, putting their obligations aside for which they have bounden duty. Recently, this Court in the case of Smt. Chantara Vs. State of U.P.⁴, found that a lady was addressed to be of

³ Udal Yadav And 5 Others v. State of U.P. and another

⁴ Criminal Misc. Anticipatory Bail Application U/s 438 Cr.P.C. No. 5397 of 2020

criminal nature stating "प्रार्थिनी अभियुक्ता आपराधिक प्रवृत्ति की महिला है" without there being any material evidence against her nor was there any case registered during her entire journey of life except the one in which she was seeking anticipatory bail before the Court. ...

4. Though exercise being undertaken for the inaction, as informed by Superintendent of Police, Mirzapur, rests on satisfaction, however the situation demands that degree of outcome in the matter should be a deterrent to such callousness that may ingrain faith of public at large over the administrative system. It is also required that no important investigation be entrusted to both officials in future.

5. All important documents like, action taken against the officers, result of preliminary inquiry and the exercise undertaken during investigation the case, be made part of detailed counter affidavit to be sworn by Superintendent of Police. The personal appearance of S.P., Mirzapur, Inspector Ashok Kumar as well as Sub-Inspector Shivji Singh Yadav, is dispensed with, in the matter, for future dates.

10. Taking note of surprising act of Sub-Inspector Sri Vibhor Kumar Singh, which has now turned as a menace, inimical to the society, is needed to be nipped in the bud, otherwise, it would spread contagiously. Therefore, the Commissioner of Police, Ghaziabad is directed to ensure the presence of Sub-Inspector Mr. Vibhor Kumar Singh, Police Station-Kotwali Nagar, District-Ghaziabad, who shall explain his conduct for the allegations levelled by opposite party no 2 by filing an affidavit. Meanwhile, the Commissioner of Police, Ghaziabad shall gather information about properties owned by said Sub-Inspector and his family members along with source of occupation thereof, and be brought on record by filing an affidavit to be sworn by not below the rank of Deputy Commissioner of Police.

11. Mr. K.P. Pathak, learned AGA for the State shall inform about this order to the Police Commissioner, Ghaziabad.

12. Registrar Compliance is directed to communicate this order to all concerned.

Order Date :- 12.4.2023

Jitendra/-