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Court No. - 64

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 56170 of 2023

Applicant :- Dharmendra

Opposite Party :- State of U.P.

Counsel for Applicant :- Hemant Sharma, Saurabh Kumar

Counsel for Opposite Party :- G.A., Pankaj Kumar Tiwari

Hon'ble Ajay Bhanot, J.

Shri Shlok Kumar, Senior Superintendent of Police, Bulandshahar is present in Court and filed his personal affidavit which is taken in the record. Affidavit filed on behalf of Forensic Science Laboratory, Ghaziabad is also taken in the record.

As per the prosecution case indecent photographs of the victim were captured, stored and transmitted by the applicant from his mobile device to the mobile device of one Dharmendra. The mobile device of the said Dharmendra was not seized or sent to the forensic science laboratory for analysis during the course of investigations. This deficiency in the investigation came to light during the bail hearing. The said deficiency has also been acknowledged in the affidavit filed by the Senior Superintendent of Police, Bulandshahar. Disciplinary action for such lapses has been initiated against the responsible officials. But that will not suffice.

Cyber offences are becoming a menace for the society. In particular indecent photographs of persons being captured, stored or transmitted through digital devices

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is tearing apart the social fabric of the country. Women victims are more vulnerable to such offences. These offences may have lifelong traumatic consequences for the victim. It is the responsibility of the police to investigate cyber crimes in professional manner and obligation of the courts to ensure that further investigations are permitted in case any lapses are noticed at the appropriate stage as per law.

Need for further investigation may arise for various reasons including unintentional oversight during the investigation. Further investigation will help to ensure that full evidence is produced before the court to arrive at the truth of the matter. The court should not adopt a pedantic view and block further investigation by rejecting such applications without due cause. To the contrary the court should ensure that appropriate investigation unearth all relevant evidences for consideration by the court.

It is submitted on behalf of the learned AGA that the Senior Superintendent of Police, Bulandshahar will file an application for taking out further investigations under Section 173(8) Cr.P.C. before the learned Sessions Court. The mobile device of said Dharmendra (receiver of the indecent photographs) has to be seized and sent for authentication and forensic analysis.

In the instant case indecent photographs of the victim have been circulated on social media. The offenders cannot go scot-free on account of inadequacy in

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investigations or pedantic view adopted by the trial court. Infact it is the responsibility of the trial court as well to examine any deficiency in the investigation at the stage of taking cognizance of the offence. The legislative intent is to enable the investigating agencies to cure such deficiency in investigations and tender all relevant facts and evidences in the trial.

Considering the facts of this case further investigation is an imperative requirement in the facts of this case to arrive at the truth of the matter and to uphold the law and bring the offenders to justice. This becomes all the more necessary since the Forensic Science Laboratory, Ghaziabad in its affidavit has admitted to its inability to extract the entire data from the mobile device of the applicant.

In the meantime the Home Secretary, Government of U.P., Lucknow and Additional Director General of Police (Technical Services), Government of U.P. are directed to ensure that the existing technology/know how in the Forensic Science Laboratories is regularly upgraded to keep pace with the rapid advances in technology.

A copy of this order be placed before the trial court for deciding the application for further investigations in light of the facts of this case.

On the next date of listing a fresh affidavit shall be filed by the SSP Bulandshahar bringing the application as

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well as the order passed by the trial court thereon before this Court.

This Court finds that submissions on behalf of the State reflect an honest desire to professionally investigate the case and gather all evidences which were left out due to lack of proficiency in the investigation as culprit of such offences cannot go scot free.

In case the police is able to access the mobile device of said Dharmendra during the course of further investigation the FSL report as regards the same shall also be placed before this Court.

Personal appearance of Shri Shlok Kumar, Senior Superintendent of Police, Bulandshahar is exempted.

Put up this case on 10.07.2024 in the list of fresh cases.

Order Date :- 16.5.2024

Dhananjai