

Court No. - 46

Case :- CRIMINAL MISC. WRIT PETITION No. - 3113 of 2022

Petitioner :- Abbas Ansari And Another

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Upendra Upadhyay

Counsel for Respondent :- G.A,Jitendra Ojha

Hon'ble Mrs. Sunita Agarwal,J.

Hon'ble Vikas Kunvar Srivastav,J.

Heard Sri Upendra Upadhyay learned counsel for the petitioners, Sri Jitendra Ojha learned counsel appearing for the respondent no. 2 and learned AGA for the State respondents.

By means of this writ petition, the petitioners herein have sought for quashing of the first information report lodged on 4.3.2022, on account of a statement made by the petitioner no. 1 during the course of election meeting on 3.3.2022.

It is stated by the learned counsel for the petitioners that taking cognizance of the statement made by petitioner no. 1 during the election meeting on 3.3.2022, the Election Commission of India passed an order dated 4th March, 2022 censoring petitioner no. 1 for violation of the Model Code of Conduct and prohibiting him from holding any public meetings, public processions, public rallies, road shows and interviews and public utterances in media (electronic, print, social medial) etc. in connection with ongoing election for 24 hours from 07:00 PM on 4.3.2022, exercising powers under Article 324 of the Constitution of India.

It is submitted by the learned counsel for the petitioners that the statement made by the petitioner no. 1 during the public meeting had been taken note of by the Election Commission of India while passing the order dated 4th March, 2022. In the said order itself, it was noted that the Chief Election Officer, U.P. had reported that a first information report under Sections 171F and 506 of Indian Penal Code, 1860 has been lodged against the petitioner no. 1.

The submission is that the offence under Section 171F is non-cognizable and Section 506 was added as a consequence of Section 171F. However, the period of sentence for the said offences being less than seven years and the offences being minor, the police could not have nabbed the petitioner no. 1. However, during the course of investigation, it has come to the

knowledge of the petitioners that the local police is trying to arrest the petitioners by adding more grave offences such as Section 153A and Section 120B IPC in the Case Crime No. 97 of 2022 which was registered on the first information report lodged under Sections 171F and 506 IPC. It is stated that the petitioner no. 1 had moved an application before the Chief Judicial Magistrate, Mau regarding the case wherein he was wanted and on the said application, a report had been submitted by the Investigating Officer wherefrom, the petitioners came to know about the aforesaid fact. The police report dated 15.3.2022 of Police Station Kotwali Nagar, District Mau is appended as Annexure '5' of the paper book.

It is argued by the learned counsel for the petitioners that at no point of time, the Election Commission of India had issued any direction or recommendation for lodging of the criminal case against the petitioners for the statement made by him at public platform. Further the offence under Section 153A IPC has been added only in order to ensure the arrest of the petitioner. In any case, the petitioner no. 2 had been implicated for the only reason of being brother of petitioner no. 1 and there is no allegation of any statement made by him. In any case, all the sections indicated in the report submitted on 15.3.2022, wherein the petitioners are wanted would entail punishment of not more than seven years. However, Section 153A being non-bailable offence, the petitioners herein are apprehending their immediate arrest.

It is further submitted that the petitioner no. 1 is an elected MLA of Mau constituency and he is being targeted not to allow him to take oath of the office.

Be that as it may, looking to the material on record and the submissions of the learned counsel for the petitioners, we find it a fit case to entertain at this stage.

Let a counter affidavit be filed by the respondent nos. 1, 3 and 4 within a period of three weeks. One week, thereafter, is granted to file rejoinder.

Let this matter be posted for 27th April, 2022 in the additional cause list.

Sri Jitendra Ojha learned counsel appearing for the respondent no. 2 may also file his reply in the meantime.

The question to issue notice to respondent no. 3 would be considered after the response of respondent nos. 1, 3 and 4 is received.

Till the next date of listing, the petitioners shall not be arrested. They shall, however, be under obligation to cooperate in the investigation. In case of any act of the petitioners of non-cooperation in the ongoing investigation, it would be open for the respondents to approach this Court for vacation of this interim order.

Order Date :- 29.3.2022

Brijesh