

Reserved on 03.02.2023

Delivered on 17.02.2023

Court No. - 46

Case :- CRIMINAL MISC. WRIT PETITION No. - 1814 of 2023

Petitioner :- Jose Prakash George And 36 Others

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

Counsel for Petitioner :- Sagar Mehrotra, Sr. Advocate

Counsel for Respondent :- G.A.

Hon'ble Anjani Kumar Mishra, J.

Hon'ble Gajendra Kumar, J.

Head Shri Dilip Kumar, learned Senior Advocate appearing for the petitioners and Shri Manish Goel, learned Additional Advocate General for the State.

The instant writ petition seeks quashing of the first information report dated 23.01.2023 giving rise to Case Crime No.54 of 2023, under Sections 420, 467, 468, 506, 120-B IPC & Section 3/5 (1) of U.P. Prohibition of Unlawful Conversion of Religion Act, Police Station Kotwali, District Fatehpur.

It is contended by learned counsel for the petitioner is that the incident regarding which, the impugned first information report has been lodged is of 14th April, 2022. Earlier in time, another first information report on almost identical allegations had been lodged on 15.04.2022 which gave rise to Case Crime No.224 of 2022, under Sections 153A, 420, 467, 468, and 506 IPC and Section 3/5 (1) of U.P. Prohibition of Unlawful Conversion of Religion Act, 2021.

The first informant in the instant case is one of the witnesses whose statement was recorded by the police under Section 161 Cr.P.C. in Case Crime No.224 of 2022, on 15.04.2022 itself. Even the accused in both the first information reports are the same barring one or two persons. Only the informant in both the cases is different. Both the cases allege mass religions conversion by fraud, coercion and allurement.

On the basis of above facts, it is contended by learned counsel for the petitioners that the impugned first information report is barred by Section 154 and 158 of the Code of Criminal Procedure and also in view of the law laid down in the Apex Court in **T.T.**

Anthony Vs. State of Kerala, 2001, Vol. 6 SCC 181, which view has been reiterated in various other cases referred to in the body of the writ petition.

Shri Manish Goel, learned Additional Advocate General appearing for the State has vehemently submitted that the impugned first information report would not be hit by the ratio in the case of T.T. Antony (supra). Both the cases are different. The impugned first information report has been lodged by the victim, who was coerced into religions conversion by inducements as well.

It is also submitted that the allegations in the impugned first information report reveal that the offence and allegations are distinct from that in the first information report giving rise to Case Crime No.224 of 2022.

He has next submitted that the first information report itself gives the reason for the delay in it lodgement. Initially, the first informant was under pressure and it was only after he emerged from it that he could muster courage to lodge the first information report. He has alleged in his first information report that threats were extended to him as also his family members.

Elaborating further, it has also been submitted by Shri Manish Goel that the instant first information report is not hit by the ratio in T.T.Antony's because it is only any aggrieved person, his/ her parents, brother, sister, or any other person, who is related to him/ her by blood or marriage, who is competent to lodge the first information report where an offence under Section 3 of the Act is alleged.

Shri Dilip Kumar has reiterated his arguments made earlier that upon perusal of the two first information reports, it is clear that both first information reports are with regard to the same incident, which took place on 14.04.2022, wherein, mass religion conversion is said to have taken place at Fatehpur. Even the accused in both the cases are almost identical. It is just that a couple of additional persons have been arrayed as accused in the impugned first information report.

We have considered the submissions made by learned counsel for the parties and perused the record.

The only material difference in the two first information reports is that the first was lodged by an office bearer of the Vishwa Hindu Parishad while the impugned first information report has been

lodged by one Virendra Kumar, who underwent religion conversion allegedly on account of fraud, misrepresentation, coercion and inducements.

The issue therefore for consideration is whether on account of the aforementioned difference, the first information report impugned in this writ petition goes out of purview of the ratio in the T.T. Anthony's case.

The offence alleged in both FIRs' is one under Section 3 of the U.P. Prohibition of Religions Conversion Act, which prohibits conversion of religion as also its attempt by traced misrepresentation, force, undue influence, and/or allurement, as also its abatement and conspiracy.

Section 5 of the Act provides the punishment, where conversion is effected by use of undue influence, force, misrepresentation, coercion, allurement etc. The punishment ranges from 1 to 5 years imprisonment. Where conversion is of a women or a minor or a person belonging to the Scheduled Caste of Scheduled Tribes, the term ranges from 5 to 10 years. Second proviso to Section 5 provides that the punishment for mass conversion to be not less than 3 years and can extend up to 10 years.

Sub-section 2 provides for payment of appropriate compensation to the victim along with a fine. The maximum compensation payable is of Rs.5 Lakhs.

Sub-section 3 provides that second or subsequent conviction for the same offence will entail to a maximum of double the punishment provided for the first offence.

Section 8 of the Act mandates a person seeking to convert his religion to furnish a declaration in the form prescribed in the Scheduled, 60 days prior to the conversion. The converter, who performs the conversion ceremony has to give a months advance notice to the District Magistrate in the form prescribed in Scheduled 2 of the Act.

Sub-section 4 of Section 8 provides that in the absence of afore enumerated notices, the religions conversion will be void.

Sub-section 5 provides the punishment where no advance notice is given by the person seeking to convert and it ranges from 6 months to 3 years along with fine which shall not be less than Rs.10,000/-

Section 7 makes an offence under the Act to be cognizable, non-bailable and triable by the Court of Sessions.

The impugned first information report apart from sections of the Indian Penal Code invokes also Section 3 / 5(1) of the Act.

In so far as the material allegations in the first information report are concerned, they pertain to the same mass conversion ceremony of the same date. Therefore, there is no substantial difference in so far as the allegations in the two first information reports are concerned and if this aspect alone is taken into account, the matter at hand is covered by the ratio in the case of T.T. Anthony's. However, the situation is confounded by Section 4 of the Act, which reads as follows -

"4. Person competent to lodge First Information Report, - Any aggrieved person, his/ her parents, brother, sister, or any other person who is related to him/ her by blood, marriage or adoption may lodge a first information report of such conversion which contravenes the provisions of Section 3."

It is this provision, which has been relied upon by Shri Manish Goel, learned Additional Advocate General. His arguments therefore is that it is the second first information report, which is by the victim is in fact the competent first information report. Therefore, by implication therefore, it has been submitted that the first information report lodged by an office bearer of the Vishwa Hindu Parishad is not a competent first information report and therefore, the impugned first information report is not contrary or is not barred by the judgement in the case of T.T. Anthony.

If the argument of Shri Manish Goel is accepted, the first information report dated 15.04.2022 is manifestly incompetent. However, that first information report is not subject matter of this writ petition.

The embargo under Section 4 as to who can lodge a first information report regarding an offence under Section 3 of the Act is absolute. The impugned first information report has been lodged by the person, who claims to be a victim of conversion obtained by mis-representation, coercion and allurement and as per Section 4(e) is the person competent to lodge the first information report.

Section 5(1), which has also been invoked only provides the punishment for an offence under Section 3 of the Act. Therefore, it has to be held that the first information report impugned in the instant writ petition is by a competent person and contains

ingredients of a cognizable offence.

The various categories of person enumerated in Section 4, who are competent to lodge the first information report are any aggrieved person. The words "any aggrieved person" at the very start of the said section can be interpreted to mean any person, especially since there is no provision under the I.P.C. or Cr.P.C., which bars or prohibits any person from lodging a first information report regarding cognizable offence.

However, the words "any aggrieved person" in our considered opinion is qualified by the subsequent categories and the words his, her parents, brother, sisters or blood relations by marriage and adoption included. Therefore, the words "any aggrieved person", if taken by themselves are extremely wide. The scope of the said term is completely whittled down by subsequent categories and therefore, it has to be said that any aggrieved person would be a person but is personally aggrieved by his or her fraudulent conversion be it an individual or in a mass conversion ceremony. Any interpretation to the contrary would render the remainder of Section 4 after the words "any aggrieved person " wholly redundant and also render the Section itself completely meaningless. Under the said circumstances, we are constrained to rule that the first information report dated 15.04.2022 was not lodged by a competent person.

Since, the first information report dated 15.04.2022 had not been lodged by a person competent to lodge it, it is of no consequence. For the same reason, the impugned first information report cannot be called a second first information report. It therefore, cannot be said that there are two separate first information reports of the same incident. The case at hand therefore, is not covered by the ratio in K.K. Anthony (supra).

It has already been observed in the earlier part of this order that the allegations in the first information report impugned, contain ingredients of a cognizable offence. Therefore, also the impugned first information report is not liable to be quashed.

In view of the reasons given above, the writ petition fails and is dismissed.

Order Date :- 17.2.2023

RKM