

Court No. - 47

Case :- CRIMINAL MISC. WRIT PETITION No. - 1135 of 2022

Petitioner :- Juber

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Chandra Bhan Dubey, Anil Kumar Dubey

Counsel for Respondent :- G.A.

Hon'ble Anjani Kumar Mishra, J.

Hon'ble Deepak Verma, J.

Heard Shri Anil Kumar Dubey, learned counsel for the petitioner and learned AGA for the State.

The instant writ petition seeks quashing of the first information report dated 08.12.2021 giving rise to Case Crime No.751 of 2021, under Sections 380, 411 I.P.C., Police Station Gulawathi, District Bulandshahr.

Although, the prayer in the writ petition is for quashing the impugned first information report, the only submission made by learned counsel for the petitioner is that he cannot be arrested, since, it is settled law that in a case where the sentence is less than 7 years. The police has to issue a notice under Section 41A Cr.P.C. before arresting the petitioner.

He has prayed for directions similar to those issued by a Division Bench of this Court in Vimal Kumar and three others Vs. State of U.P. and three others, in Criminal Misc. Writ Petition No.17732 of 2020.

Perusal of the judgement relied upon reveals that therein the provisions contained in Section 41 & 41A Cr.P.C. and their sub-sections have been elaborately explained. It has also been directed that the copy of the order should be forwarded to the Law Secretary, who shall impress upon all the police officers the directions being complied with. It has also been observed that " the police authorities would convey or guidelines not only in this matter but in all the investigation, they are to be taken".

Thus, for all practical purposes, a general mandamus can be issued by the Division Bench that the provisions of Section 41 & 41A Cr.P.C. should necessarily be followed by the

Investigating Officers. The petitioner is claiming reiteration of the general mandamus, which has already been issued by the High Court.

In our considered opinion, there is no provision which provides for issuance of repeated mandamus by the High Court and that too in a case where there is no foundation in the pleadings as to why the said mandamus requires to be reiterated.

The judgement cited also observes that in case, the general mandamus issued therein is not complied. The provisions of the contempt of Court Act would necessarily come into play.

It is our experience invariably writ petitions are being filed seeking quashing of first information reports, which disclose or contain ingredients of cognizable offence and therefore in view of the settled law, which first information report cannot be quashed. Once, such observation is made by the Court, it is invariably prayed that a direction be issued in the case of Vimal Kumar (*supra*) be issued.

The judgement in Vimal Kumar (*supra*) has observed that non compliance of the directions issued would necessarily entail contempt proceedings.

In effect, writ petitions are being filed for seeking quashing of the first information report not because they have substance but only to obtain a direction as has been issued in the case of Vimal Kumar.

It would be relevant to note that the directions that was issued by the writ Court in Vimal Kumar were in consonance with the directions issued by the Apex Court as well.

There appears no justification for issuance of or reiteration of directions or a general mandamus already issued by this Court as is being sought in this writ petition and in many other petitions that have come up before this Court

Since, a general mandamus has been issued by the writ Court, which is necessarily required to be complied with, there is no justification for reiterating the same as is prayed by counsel for the petitioner.

In fact, there was no necessity for filing this writ petition with a prayer for quashing of an FIR and then seeking reiteration of a mandamus or general mandamus already issued by the High Court which directions are also in consonance of directions, which have already been issued by the Apex Court. The petition

is therefore, found to be unnecessary and sheer abuse of the process of law.

Under the circumstances, we not only dismiss the writ petition as a cognizable offence is disclosed in the impugned first information report.

We also imposes cost of Rs.20,000/- upon the petitioner for wasting the precious time of the Court by seeking reiteration of a general mandamus, which has already been issued by the High Court.

The cost shall be deposited within a period of 30 days from today, failing which, the same shall be recovered as arrears of land revenue.

Order Date :- 16.3.2022

RKM