

Case :- APPLICATION U/S 482 No. - 23727 of 2021

Applicant :- Madhav Singh

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

Counsel for Applicant :- Dharmendra Singh

Counsel for Opposite Party :- G.A.

Hon'ble Umesh Kumar,J.

Heard learned counsel for the applicant and learned AGA for the State.

This applicant has been filed with a prayer to quash the impugned order dated 16.9.2021 passed by the learned Chief Judicial Magistrate, Mathura in Case Crime No. 0078/2019, under Sections 420, 467, 468, 471, 120-B, 409 I.P.C., Police Station Magorra, District Mathura and further direct the learned Chief Judicial Magistrate, Mathura to forward the statement on affidavit as well as other documentary evidence filed on behalf of the applicant to the Investigating Officer and also ensure impartial and fair investigation in the matter in accordance with law as settled by the Apex Court in the case of ***Sakiri Vasu Vs. State of U.P. & others, 2008 (60) ACC 689.***

The applicant is the complainant in Case Crime No. 0078/2019, under Sections 420, 467, 468, 471, 120-B, 409 I.P.C., Police Station Magorra, District Mathura.

The grievance of the applicant is that the case is not being investigated by the police in a fair manner and still the statements of the complainant and the witnesses have not been recorded by the Investigating Officer. The affidavits of the complainant and the witnesses were filed before the C.J.M., Mathura with a prayer to forward the same to the Investigating Officer but the prayer has been rejected vide order dated 16.9.2021 passed by the C.J.M. Mathura on the ground that the informant himself may produce his affidavit before the competent authority.

Learned counsel for the applicant has relied on the decision of the Apex Court in ***Sakiri Vasu Vs. State of U.P. & others, 2008 (60) ACC 689***, wherein in para no. 24, the following has been observed :-

"In view of the abovementioned legal position, we are of the view that although section 156(3) Cr.P.C. is very briefly worded, there is an implied power in the Magistrate under

Section 156 (3) Cr.P.C. to order registration of a criminal offence and/or to direct the officer-in-charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in section 156 (3) Cr.P.C., we are of the opinion that they are implied in the above provision".

In view of the aforesaid decision of the Apex Court, it is obvious that it is a duty of the Magistrate to ensure that investigation is done impartially and in a fair manner. When the complainant alleged that the statements of the complainant and the witnesses have not been recorded by the Investigating Officer, the Magistrate could have forwarded the affidavits filed on behalf of the applicant to the Investigating Officer. The Magistrate cannot wash his hands of the case after passing an order under Section 156 (3) Cr.P.C.

In these circumstances, the order dated 16.9.2021 passed by the C.J.M., Mathura is quashed. Learned Magistrate is directed to forward the affidavits filed by the applicant to the Investigating Officer and to ensure fair investigation. The applicant may also approach the Higher Police Authorities for redressal of his grievance.

With these directions, the application is disposed of.

Order Date :- 22.2.2022

Shafique