

**Court No. - 31**

**Case :-** MISC. SINGLE No. - 5045 of 2006

**Petitioner :-** Mahesh Chandra Dwivedi

**Respondent :-** State Of U.P.Through Secy. Home Lko. And 3 Others

**Counsel for Petitioner :-** M.A.Siddiqui

**Counsel for Respondent :-** Govt.Advocate

**Hon'ble Vikas Kunvar Srivastav,J.**

Case is called out.

Learned counsel for the petitioner, Sri M.A. Siddiqui, Advocate and learned A.G.A. for the State, Sri Balkeshwar Srivastava, Advocate are present.

The instant writ petition is moved under Article 227 of the Constitution of India invoking the supervisory jurisdiction of the High Court over its subordinate court against the impugned order dated 12.9.2006 passed by the Additional Session Judge/Fast Track Court No.12, Sultanpur in the capacity of the revisional court. The said revision was moved by the petitioner against the order dated 20.4.2006 passed by IIIrd, Additional Chief Judicial Magistrate in Criminal Case No.386 of 2006 (Mahesh Chandra Dwivedi Vs. State of U.P.).

Before going through the aforesaid two impugned orders of the learned courts below namely the revisional court of Additional Session Judge/F.T.C. Sultanpur as well the court of Additional Chief Judicial Magistrate, Sultanpur so as to look into the vices crept into the impugned orders giving cause of action to file this petition.

It would be relevant to give a brief account of the matter. Petitioner was carrying on the business of Tent and Shamiana at Jamo Bazar, Sultanpur in the name and style 'Sambal Tent House'. In the intervening night of 7/8.05.2005, a theft took place in his tent house by breaking the locks and doors of the back side, the thieves carried away almost all the articles of Shamiana valued of approximately sum of Rs.1,00,000/-. On coming into the knowledge of theft on the next morning, petitioner rushed to the police station and immediately given a written complaint which was not registered by the local police as First Information Report. On 19.05.2005 after a considerable delay of 11 days the police registered the F.I.R. bearing Case Crime No.125/2005 under Section 379 I.P.C., Police Station-Jamo, Sultanpur. The investigation started and ultimately a final

report was submitted before the court on 20.04.2006. The final report states that report as to the incident of theft was false and lodged with malafide motive of claiming insurance amount, there is no reason to proceed with the case. Learned court below accepted the final report despite a protest petition against the said report was there and summoned the complainant (petitioner) under Section 182 Cr.P.C. for criminal prosecution.

It is the aforesaid order aggrieved from which the petitioner firstly moved a criminal revision which was heard by Additional Session Judge/F.T.C. Court No.12, Sultanpur who rejected the same. The petitioner then came to the High Court with petition stating illegality and irregularity in the impugned orders passed by the court below which are given hereunder.

(i) The theft was committed by unknown thieves, therefore, police was to investigate the matter and burdened to find out the culprits.

(ii) The report was made on morning of 8.5.2005 promptly within reasonably possible time from the commission of offence in the night of 7/8.05.2005 but police itself delayed in registering the F.I.R. for 11 days on 19.05.2005. Meanwhile, no investigation could be started for want of registration of F.I.R.

(iii) The statement of natives of the locality was not recorded.

(iv) The police submitted final report before the court without investigating the matter seriously, simply on speculation that the FIR of theft might have been lodged for claiming insurance falsely.

Learned counsel for the petitioner argued that now more than 15 years has already been elapsed from the date of incident and the witnesses of the incident who were native of the locality are not available so as to depose before the court with regard to the incident.

Learned counsel for the petitioner further argued that the impugned order was passed only on consideration of the case diary submitted by the police station and the final report was accepted on the basis of materials on case diary, however, case diary in itself have no material except a speculation as to the lodging of FIR for false claim of insurance.

Learned A.G.A. for the State argued that the learned counsel always tried to linger the case and as such period of 15 years elapsed without proceeding with the petition, therefore, petition has become infructuous.

The argument of learned A.G.A. is not tenable as the impugned order passed by Additional Chief Judicial Magistrate, Sultanpur on 20.04.2006 is consisting of order of summoning to the complainant for prosecution with regard to false information of theft given to the police and the court.

Both the courts below erred in acting in accordance with the procedure on receiving the police report over a registered criminal case. On examining the impugned order dated 20.04.2006, concluding para of the order of Additional Chief Judicial Magistrate, Sultanpur shows a conclusion "the goods stolen in the incident of theft are worth Rs.97,200/- including mats, pillow and several other goods. Had the police been sincere for prompt action the stolen goods could have been recovered. The said sincerity and promptness undoubtedly justifies the conclusion of the Investigating Officer."

Amazing enough the court of Magistrate on the one hand reached at the conclusions that investigating officer was under fault to commit delay that's why stolen goods could not be recovered, the consequence of such conclusion could be that the police who submitted final report as to the falsity of the First Information Report as to the theft in the shop of the petitioner was wrong. The protest application could have been treated as complaint. The speculation of police that the information as to the theft might have been lodged for the purpose of claiming insurance amount falsely could not be given weight by the Magistrate legally for holding the First Information Report lodged falsely. As such proceeding for action under Section 182 Cr.P.C. vide the impugned order of Magistrate dated 20.4.2006 is not tenable in the eyes of law.

In the case of ***Vishnu Kumar Tiwari Vs. State of Uttar Pradesh and Anr.*** reported in ***(2019) 8 SCC 27***, it is held, "*before a Magistrate proceeds to accept a final report under S.173 and exonerate the accused, it is incumbent upon the Magistrate to apply his mind to the contents of protest petition and arrive at a conclusion thereafter - While the investigating officer may rest content by producing the final report, which, according to him, is the culmination of his efforts, the duty of the Magistrate is not one limited to readily accepting the final report - It is incumbent upon Magistrate to go through the materials, and after hearing the complainant and considering the contents of protest petition, finally decide the future course of action to be, whether to continue with the matter or to close the case.*"

The protest application of the petitioner was not only rejected but also, without examining the truthness or falsity of the F.I.R. on evidence, the learned court of Additional Chief Judicial

Magistrate proceeded under Section 182 Cr.P.C. for the prosecution of complainant (petitioner) for lodging false report.

Section 182 Cr.P.C. is quoted hereunder for easy reference:-

*"182. Offences committed by letters, etc.*

*(1) Any offence which includes cheating may, if the deception is practised by means of letters or telecommunication messages, be inquired into or tried by any Court within whose local jurisdiction such letters or messages were sent or were received; and any offence of cheating and dishonestly inducing delivery of property may be inquired into or tried by a Court within whose local jurisdiction the property was delivered by the person deceived or was received by the accused person.*

*(2) Any offence punishable under section 494 or section 495 of the Indian Penal Code (45 of 1860 ) may be inquired into or tried by a Court within whose local jurisdiction the offence was committed or the offender last resided with his or her spouse by the first marriage 1 or the wife by the first marriage has taken up permanent residence after the commission of the offence."*

If the learned court of Additional Chief Judicial Magistrate was not in agreement with the protest application lodged by the complainant against the report of Investigating Officer submitted before the court, the just and proper action needed on the part of the court was to read the protest petition as complaint, so that the informant (petitioner) could have been given opportunity to produce evidences and witnesses in support of complaint made to the police with regard to the theft in his shop. As such, the order of the Additional Chief Judicial Magistrate, Sultanpur dated 20.4.2006 having been passed without affording opportunity to the petitioner for leading evidences in support of his claim. The court has not properly examined on evidences judicially whether the report was false with regard to the theft, as lodged in the local police station on 19.05.2005, therefore, the order is not tenable in the eyes of law.

On the basis of above discussions, it is held that the order dated 20.04.2006 of Chief Judicial Magistrate, Sultanpur is suffering from illegality and the Additional Session Judge/Fast Track Court No.12, Sultanpur was also wrong in confirming the order of the Magistrate vide his judgment 12.09.2006.

Concluding the discussions, both the impugned orders i.e., order dated 12.9.2006 passed by the Additional Session Judge/Fast Track Court No.12, Sultanpur and the order dated 20.4.2006 passed by IIIrd, Additional Chief Judicial Magistrate in Criminal Case No.386 of 2006 (Mahesh Chandra Dwivedi Vs. State of U.P.) are set aside and writ petition is **allowed**.

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The order be communicated to the court concerned. Process issued, if any, shall remain ineffective and unenforceable.

**Order Date :- 27.10.2021**

Gaurav/-