

Court No. - 85

Case :- MATTERS UNDER ARTICLE 227 No. - 12234 of 2024

Petitioner :- Jagat Singh

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Dinesh Kumar Singh, Indresh Kumar Singh

Counsel for Respondent :- G.A.

Hon'ble Saurabh Srivastava, J.

1. Heard Sri Dinesh Kumar Singh, learned counsel for the petitioner and learned A.G.A. for the State.
2. The instant petition has been preferred for challenging the cognizance order dated 01.12.2023 in pursuance to sections 504 and 506 of IPC passed by learned court of Chief Judicial Magistrate, Mirzapur in Case Crime No. 0166 of 2018, alongwith order dated 14.08.2024 passed by learned court of Additional Sessions Judge, Court No.3, Mirzapur passed in Criminal Revision No. 08 of 2024 (Jagat Singh Vs. State of U.P.).
3. The factual matrix of the matter derives that a first information report lodged at the behest of respondent no. 2 and same has been registered as Case Crime No. 0166 of 2018, under Sections 143, 341, 504, 506 of IPC at Police Station Vindhyachal, District Mirzapur on dated 04.07.2028 which was related to a dispute in respect of right to way.
4. In pursuance to Case Crime No. 0166 of 2018 detailed investigation has been carried out by concerned Investigating Officer which culminated into submission of charge-sheet on dated 30.07.2018 under sections 143, 341, 504, 506 of IPC, upon which under Section 190 Cr.P.C. cognizance has been taken on dated 01.10.2018 by the learned concerned Magistrate and the case was registered as case no. 7641 of 2018 (State Vs. Jagat Singh) in case crime no. 0166 of 2018.
5. Being aggrieved with the order dated 01.10.2018 petitioner challenge the same by way of filing revision and the same has been registered as Criminal Revision No. 40 of 2019 (Jagat Singh Vs. State of U.P.) before learned court of Additional District and Sessions Judge/Special Judge (Gangster Act), Court No. 5,

Mirzapur after considering the merit of the matter the learned court of Additional District and Sessions Judge/Special Judge (Gangster Act), Court No. 5, Mirzapur allowed the criminal revision preferred at the behest of the petitioner vide order dated 20.07.2022 by way of setting aside order dated 01.10.2018 through which cognizance has been taken by learned court of Chief Judicial Magistrate, Mirzapur by way of remitting back the matter to decide as fresh. In pursuance to the order dated 20.07.2022 passed in Criminal Revision No. 40 of 2019 learned court of Chief Judicial Magistrate, Mirzapur again took cognizance in pursuance to sections 504 and 506 of IPC on dated 01.12.2023 and again same has been challenged before learned revisional court in Criminal Revision No. 08 of 2024 (Jagat Singh Vs. State of U.P.), but this time criminal revision preferred at the behest of petitioner has been rejected vide order dated 14.08.2024 by way of affirming the order dated 01.12.2023 passed by learned court of Chief Judicial Magistrate, Mirzapur.

6. Learned counsel for the petitioner submitted that the vital fact which is apparent from the narration of the F.I.R. itself that the same is not bearing any specific date, time and witnesses which are the essential ingredient of any information submitted by any aggrieved person and the same has been lodged in shape of F.I.R. under section 154 Cr.P.C. but without considering the factual aspect which is not disputed and apparent that no specific date and time of the incident mentioned in F.I.R. in the most mechanical manner, cognizance has been taken by learned court of Chief Judicial Magistrate, Mirzapur and the same has been affirmed by learned revisional court vide order dated 14.08.2024.

7. After hearing submission extended by learned counsel for the petitioner although prop-richtly of law demands for passing any order after hearing parties concerned but in the instant matter the factual position is apparent and there is hardly any need to seek any rebuttal over the factual matter which is crystal clear from narration of the F.I.R. itself and as such process of issuing notices to respondent no. 2 is hereby dispensed with and although notices has been accepted on behalf of respondent no. 1 by learned Government Advocate who is being represented through learned A.G.A.

8. The facts which have been mentioned which is available in the records that no specific date and time is mentioned in the F.I.R. has not been disputed by learned Additional Government Advocate appearing on behalf of State.

9. Section 190 of Cr.P.C. is a compulsory mandate of the provisions specifically defined with regard to conduction of the procedure which has to be adhered by the competent authority in shape of the Magistrate, while passing order under Section 190 of Cr.P.C only the charge-sheet along-with the sections preferred by the concerned Investigating Officer was not the only material which has to be taken into consideration for passing order of taking cognizance whereas the entire case diary put forward by concerned Investigating Officer which carries the application of information, F.I.R, Statements recorded under section 161 Cr.P.C., other statements recorded by the prosecution witnesses and independent witnesses alongwith site plan and other relevant material which led the Investigating Officer for filing charge-sheet in particular sections of IPC.

10. In the instant matter, the first informost important issue which have been indicated by learned counsel for the petitioner that there is hardly any specific date and time mentioned in the F.I.R. is the most important the same which has to be taken into consideration by learned court of Magistrate before taking cognizance under Section 190 of Cr.P.C., precisely it is much and more important at the time when the matter has already been once remitted back by learned revisional court for considering as fresh before learned court of Magistrate by way of setting aside the order passed under section 190 of Cr.P.C. against the petitioner, it is highly shocking for the Court that once again although certain sections have been reduced but in spite of the same cognizance has been taken up and there is no recital regarding non availability of specific date and time which is the essential ingredient which must be available in the narration of the F.I.R.

11. In view of the aforementioned facts and circumstances and discussion order passed by learned Magistrate on dated 01.12.2023 through which cognizance has been taken up over the charge-sheet submitted by the concerned Investigating Officer in pursuance to Sections 504 and 506 of IPC and once the same has been indicated and apprised through criminal revision before learned revisional court unfortunately the same has not been given any evidence to dismiss and the same against the petitioner before exercise carried out by learned Magistrate as well as learned court of Session Judge is highly illegal and perverse and the same is hereby set aside.

12. An error which is apparent on the face of record in shape of non-availability of the specific date and timing over the F.I.R. cannot be rectified at the stage of investigation and as such entire proceeding arising out of Case Crime No. 0166 of 2018, under

Sections 504 and 506 of IPC, Police Station Vindhyachal, District Mirzapur are hereby set aside.

13. The petition stands **allowed** accordingly.

14. However, it is made clear that the respondent no. 2 shall be at liberty to place information regarding any incident, if so happened, with specific date and time before the appropriate authority for redressal of his grievance.

Order Date :- 8.11.2024

Vikram