

Waseem vs State Of U.P. And Another on 28 March, 2025

Author: Saurabh Srivastava

Bench: Saurabh Srivastava

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:44041

Reserved on 12.03.2025

Delivered on 28.03.2025

Court No. - 74

Case :- MATTERS UNDER ARTICLE 227 No. - 2236 of 2025

Petitioner :- Waseem

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Kandarp Srivastava, Saurabh Srivastava

Counsel for Respondent :- G.A., Sushil Dubey

Hon'ble Saurabh Srivastava, J.

1. Heard Sri Kandarp Srivastava along with Sri Saurabh Srivastava, learned counsel for petitioner and Sri Sushil Dubey, learned counsel for respondent no.2 as well as learned AGA for the State-respondent.

2. By means of present petition, petitioner has challenged order dated 23.01.2025 passed by learned Additional Sessions Judge, Court No.8, Bulandshahar in Criminal Revision No.168 of 2024 (Wasseem Vs. State of U.P. and another) as well as order dated 06.03.2024 along with order dated

03.04.2024 passed by learned Chief Judicial Magistrate, Bulandshahar in Misc. Case No.13813 of 2022, arising out of Case Crime No.293 of 2021, under Section 147, 148, 149, 307, 352, 452, 324, 504, 506, 325 IPC, Police Station Gulawati, District Bulandshahar.

3. Brief facts of the present case are that respondent no.2 lodged an FIR bearing Case Crime No.293 of 2021 against six persons including petitioner in pursuance of alleged incident dated 23.04.2021, whereupon inquiry was conducted and after culmination of the same, the concerned Investigating Officer preferred police report on dated 07.03.2022 whereupon cognizance was taken by learned court concerned on dated 11.03.2022. Thereafter petitioner preferred an application under Section 173(8) Cr.P.C. before concerned Senior Superintendent of Police seeking further investigation whereupon, the matter was transferred to Crime Branch for further investigation vide order dated 05.10.2023. Thereafter, the Investigating Officer of Crime Branch further investigated the matter and on the basis of CDR as well as receipt of toll plaza, found that petitioner was not present at the spot on the date and time of the alleged incident and he preferred police report on dated 21.01.2024 to the fact that petitioner was wrongly implicated in the present case.

4. Being aggrieved with police report dated 21.01.2024, respondent no.2 preferred protest petition on dated 29.02.2024 which was disposed of vide impugned order dated 06.03.2024 by learned court concerned without accepting or rejecting the police report. Thereafter petitioner preferred an application dated 20.03.2024 before the court concerned with a prayer to quash the said criminal proceedings qua to him on the ground that as per the police report dated 21.01.2024, he was not involved in commission of alleged crime. The said application was rejected by learned court concerned vide impugned order dated 03.04.2024. Being aggrieved with orders dated 06.03.2024 and 03.04.2024, petitioner preferred criminal revision which was also dismissed by learned revisional court vide order dated 06.05.2024 which impugned the present petition.

5. While challenging order dated 06.03.2024, learned counsel for petitioner submitted that the trial court has limited scope under the provision of Code of Criminal Procedure either to accept the police report or reject the same with reasons and apart from these two provisions, the trial court has power to direct for further investigation or to treat the same as a complaint case but learned court concerned without adopting the said procedure, vide impugned order dated 06.03.2024, exceeding its jurisdiction, disposed of the protest petition preferred at the behest of respondent no.2 against police report dated 21.01.2024 and as such, order dated 06.03.2024 is bad in the eye of law. Insofar as impugned order dated 03.04.2024 is concerned, learned counsel for petitioner submitted that once the concerned Investigating Officer of Crime Branch found in the further investigation that petitioner was not involved in the commission of alleged incident, there was no occasion before learned court concerned to reject the application preferred at the behest of petitioner seeking quashing of the criminal proceedings initiated against him in pursuance of the first police report and as such, the said order is also liable to be quashed. Learned counsel for petitioner further submitted that learned revisional court has also committed gross illegality while rejecting the criminal revision preferred at the behest of petitioner vide order dated 23.01.2025 since the same has been passed without considering the grounds mentioned in the criminal revision and as such, the same may be set aside.

6. Per contra, Sri Sushil Dubey, learned counsel for respondent no.2 as well as learned AGA for the State-respondent vehemently opposed the prayer as sought through the instant petition and rebutted the stands taken up by learned counsel for petitioner by way of submitting that after conclusion of inquiry, chargesheet was submitted on dated 11.03.2022 whereupon cognizance has also been taken on the same day whereas petitioner was absconding due to which NBW and proceedings under Section 82 have already been initiated against him on dated 08.07.2022 and after lapse of two years, petitioner preferred an application before the concerned police authority for further investigation and as such, no relief may be extended to him.

7. Learned counsel for respondent no.2 submitted that learned court concerned rightly rejected the application for quashing the case because he has no power to discharge an accused under Section 307 IPC and the said power is vested with learned Sessions Judge to discharge an accused under Section 227 Cr.P.C. Learned counsel for respondent no.2 further submitted that the Magistrate has also no power to review its own order once he has already taken cognizance for offence whatsoever and as such, he has not committed any error in passing the orders impugned. It has also been submitted by learned counsel for respondent no.2 that legal value of police report under Section 173(8) Cr.P.C. is treated as same police report filed under Section 173(2) Cr.P.C. whereupon learned court concerned has already taken cognizance and as such, there was no occasion to pass fresh cognizance order over police report under Section 173(8) Cr.P.C. therefore, the present petition lacks merit and the same may be dismissed as such.

8. After having the rival contentions raised by learned counsel for parties as well as written arguments submitted on their behalf, it is crystal clear that initiation of prejudice caused to petitioner, is arising out of order dated 06.03.2024 through which protest petition preferred at the behest of respondent no.2, has been disposed of by learned court of Chief Judicial Magistrate, Bulandshahar. By bare perusal of order dated 06.03.2024, it is apparent that although learned Chief Judicial Magistrate, Bulandshahar returned with the finding having disagreement with the final report submitted by the concerned Investigating Officer, Crime Branch and the same has been declared as illegal since order of further investigation passed by concerned police authority under Section 173(8) Cr.P.C., was mentioned as illegal since chargesheet has already been submitted before learned court concerned, whereupon cognizance has already been taken up in pursuance to Section 190 Cr.P.C.

9. Although learned court of Chief Judicial Magistrate, Bulandshahar discussed all the abovementioned legal aspects involved in the matter and justified his action in pursuance to Section 190(1)(b) Cr.P.C. over final report preferred by concerned Investigating Officer, Crime Branch under Section 173(8) Cr.P.C. but at the same time, no specific orders available in the order impugned dated 06.03.2024 in shape of rejecting the subsequent final report under Section 173(8) Cr.P.C. while adjudicating the protest petition preferred by respondent no.2. Specific absence of rejecting the final report submitted by the concerned Investigating Officer of Crime Branch, has also not been dealt with by learned revisional court which is apparent from the order dated 23.01.2025.

10. In view of the aforesaid facts and circumstances, order dated 23.01.2025 passed by learned Additional Sessions Judge, Court No.8, Bulandshahar in Criminal Revision No.168 of 2024 as well

as orders dated 06.03.2024 and 03.04.2024 passed by learned Chief Judicial Magistrate, Bulandshahar in Misc. Case No.13813 of 2022, arising out of Case Crime No.293 of 2021, under Section 147, 148, 149, 307, 352, 452, 324, 504, 506, 325 IPC, are hereby set aside. Matter is hereby remitted back to the learned Chief Judicial Magistrate, Bulandshahar for passing fresh orders over the protest petition preferred by respondent no.2 by way of specific orders necessary to be passed in light of the discussions made herein above.

11. However, it is made clear that the abovementioned exercise shall be finalized within a period of four months from the date of presentation of a certified copy of this order before learned court concerned and till disposal of the protest petition preferred at the behest of respondent no.2, no coercive action shall be initiated against petitioner herein in pursuance of the present case.

12. Accordingly, the present petition stands allowed.

Order Date :- 28.3.2025 Vivek Kr.

(Saurabh Srivastava, J.)