

Ajai Pratap Singh vs State Of U.P. Thru. Prin.Secy. Deptt. Of ... on 21 September, 2023

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2023:AHC-LK0:61847

Court No. - 28

Case :- APPLICATION U/S 482 No. - 9145 of 2023

Applicant :- Ajai Pratap Singh

Opposite Party :- State Of U.P. Thru. Prin.Secy. Deptt. Of Food Safety And Drug Administ

Counsel for Applicant :- Amar Nath Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Shree Prakash Singh,J.

Heard Sri Amar Nath Dubey, learned counsel for the applicant, Sri B.N. Nishad, learned A.G.A. for the State.

Instant application has been filed with prayer to quash the entire criminal proceeding of Criminal Complaint Case No. 7965 of 2023, under Section-26 (2) (11)/59 (1), 26 (2) (II)/51 The Food Safety and Standards Act 2006, Police Station-Kotwali City, District-Raebareli as well as impugned summoning order dated 13.4.2023 passed by learned Additional Chief Judicial Magistrate 1, Rae Bareli in the aforesaid complaint case.

Leaned counsel appearing for the applicant submits that the applicant is innocent and has falsely been implicated in the instant matter. He next added that the learned trial court while issuing the summons has ignored the settled proposition of law that in case of complaint cases, reasons must be recorded while issuing summons, but bare perusal of the summoning order it transpires, that no

reason has been recorded thus, the order dated 13.04.2023 is erroneous and the same is liable to be set aside.

In support of his contentions, he has placed reliance on a Judgment of the Apex Court in the case of Anil Kumar and Others Versus M.K.Aiyappa and Another, reported in (2013)10 Supreme Court Cases,705 and has placed reliance on paragraph no. 11 of the said Judgment, which is quoted hereinunder :-

"11. The scope of Section 156(3) CrPC came up for consideration before this Court in several cases. This Court in Maksud Saiyed case examined the requirement of the application of mind by the Magistrate before exercising jurisdiction under Section 156(3) and held that where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 CrPC, the Magistrate is required to apply his mind, in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) against a public servant without a valid sanction order. The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) CrPC, should be reflected in the order, though a detailed expression of his views is neither required nor warranted. We have already extracted the order passed by the learned Special Judge which, in our view, has stated no reasons for ordering investigation".

Referring the aforesaid, he submits that the Apex Court while dealing with the matter in terms of section 156(3) of Cr.P.C. or Section 200 Cr.P.C. has held that the Magistrate is required to apply it's mind and the application of mind by the Magistrate must be reflected in the order and the mere statement that he has gone through the complaint,documents and heard the complainant, will not be sufficient.

He has further placed reliance on the Judgment of the Apex Court in the case of Maksud Saiyed Versus State of Gujarat and Others, reported in (2008)5 Supreme Court Cases, 668 and has referred paragraph no. 13 of the said Judgment, which is quoted hereinunder :-

"13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. The Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must

contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability."

Referring the aforesaid, he submits that the case of the present applicant is squarely covered with the ratio of judgments above- said, therefore, submission is that the impugned order dated 13.04.2023 passed is against the settled proposition of law and the same does not sustain in eyes of law and is liable to be set aside.

Learned counsel for the State has vehemently opposed the contentions aforesaid but he could not dispute the settled proposition of law.

In view of the above-said submissions and the settled proposition of law, the impugned order dated 13.04.2023 is hereby setaside.

Matter is remitted back to the trial court concerned to pass a fresh order, in accordance with law, within a period of thirty days from the date of this order.

The instant application is hereby allowed.

Order Date :- 21.9.2023 Mayank