

Reserved on : 25.05.2022

Delivered on : 12.07.2022

Court No. - 46

Case :- CRIMINAL MISC. WRIT PETITION No. - 1430 of 2021

Petitioner :- Farha Faiz

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Ravindra Kumar Mishra, Brij Raj Singh

Counsel for Respondent :- G.A., Ajay Kumar Sharma

Hon'ble Anjani Kumar Mishra, J.

Hon'ble Deepak Verma, J.

1. Counter affidavit filed by learned AGA is taken on record, after hearing counsel for the parties.
2. Heard learned counsel for the petitioner, learned AGA for the State and perused the material brought on record.
3. The instant petition has been filed with following relief:-

“(i) Issue writ, order or direction in the nature of mandamus commanding the respondent authorities, investigating agencies to make further investigation u/s 173(8) Cr.P.C. in Case Crime No.286 of 2010 dated 04.04.2010 u/s 467, 468, 471, 120-B, 420 I.P.C., P.S. Sadar Bazar, District Saharanpur.”
4. Petitioner argued the case in person. The petitioner in the present case claims to be a practising Advocate of the Apex Court at Delhi and also a social activist and raised the issues against fanaticism, corruption and land mafias and also claims to have worked for securing the rights of downtrodden women and children. She had also intervened in Triple Talaq case before the Hon'ble Apex Court in favour of Muslim women.
5. An FIR was lodged by one Ashok Kumar Jain (now dead), against fifteen named accused persons including the petitioner and her husband which has been registered as Case Crime No.286 of 2010,

under Sections 420, 467, 468, 471, 120-B I.P.C. at Police Station Sadar Bazar, District Saharanpur.

6. Petitioner argued that the allegations made in the FIR are totally false, frivolous and bogus in nature. Investigating Officer during enquiry collected evidence against the accused person and submitted charge-sheet bearing No.325 on 10.09.2010.

7. Petitioner has argued that evidence regarding Khasra Plot No.401 measured 9 biswa was recorded in the name of Allahdiyan in the revenue record as well as Khasra No.401/2 recorded in the name of Mst. Zindi to which the petitioner having possession. The local police under power and pressure of the informant has submitted charge-sheet. The petitioner has made various representations from Chief Secretary, Government of U.P. to other authorities. The petitioner has also moved a detailed representation to the Director General of Police, U.P. at Lucknow to pass an order for further investigation under Section 173(8) Cr.P.C.

8. *Per contra*, learned AGA in paragraph 8 of his counter affidavit has submitted that after thorough investigation, charge-sheet has already been filed and learned trial court had taken cognizance and trial is on progress.

9. It is clear from the above averment, petitioner is an accused in that Case Crime No.286 of 2010 and charge-sheet has already been filed. It is an accused, who has come up with a prayer for further investigation. The right further is in the hands of the investigating agency. The investigating agency has not come forward with any prayer for further investigation. The object of this petition is only to delay the pending proceedings.

10. Upon consideration the arguments raised by learned counsel for the petitioner and learned AGA, we are of the considered opinion that the right of further investigation under Section 173(8) Cr.P.C. is given to investigating agency, no other one except the investigating agency can think that further investigation is required for decision of the case, they can move application forwarded for further investigation under Section 173(8) Cr.P.C.

11. Since the trial is under progress, at this stage, neither the learned Magistrate *suo motu* nor on an application filed by the complainant/informant, can direct further investigation. Such a course would be open only on the request of the investigating agency, in circumstances warranting further investigation, on the detection of material evidence only to secure fair investigation and trial.

12. The facts of the case and perusal of material brought on record reveals that the investigation discloses the complicity of the petitioner in the crime. The accused cannot dictate the manner in which investigation is to be carried out, which is prerogative of the investigating agency alone. The investigating agency has filed a charge-sheet against the petitioner. The court below has taken cognizance and trial is under progress. No sufficient and valid reason exists for directing further investigation, prayed for.

13. The writ petition is accordingly, **dismissed**.

(Deepak Verma,J.) (Anjani Kumar Mishra,J.)

Order Date :- 12.07.2022

Nitin Verma