

Court No. - 1

Case :- CRIMINAL MISC. WRIT PETITION No. - 3697 of 2022

Petitioner :- Mohammed Zubair

Respondent :- State Of U.P. Thru. Prin. Secy./Addl Chief Secy. (Home), Lko. And Others

Counsel for Petitioner :- Mohd. Kumail Haider

Counsel for Respondent :- G.A.

Hon'ble Ramesh Sinha,J.

Hon'ble Ajai Kumar Srivastava-I,J.

Heard Shri Mohd. Kumail Haider, learned counsel for the petitioner, Shri Santosh Kumar Mishra, learned A.G.A. for the State/respondents no.1 to 4 and perused the impugned F.I.R. as well as material brought on record.

This writ petition has been filed by the petitioner- **Mohammed Zubair** for the following reliefs:-

"I. to issue a writ, order, or direction in the nature of certiorari quashing the impugned F.I.R. dated 01.06.2022 registered against the petitioner as Case Crime No.0226 of 2022, under Sections 295-A of the Indian Penal Code and Section 67 of the Information Technology Act, 2000 at Police Station Khairabad, District Sitapur, contained in Annexure No.1 to the writ petition;

II. to issue a writ, order or direction in the nature of mandamus commanding the respondent no.2 to 4 not to proceed, prosecute, or arrest the petitioner on the basis of the impugned F.I.R. dated 01.06.2022, registered against the petitioner as Case Crime No.0226 of 2022, under sections 295-A of the Indian Penal Code and section 67 of the Information Technology Act, 2000 at Police Station Khairabad, District Sitapur, contained in Anneure no.1 to the writ petition;

III. to issue a writ, order or direction in the nature of mandamus commanding the respondent no.1 to awrd compensatin to the petitioner for the harassment and stress suffered by him and the threat on his life and safety arising out of the impugned malicious F.I.R."

The allegations in the impugned F.I.R., which has been lodged by respondent no.5 against the petitioner are that on 27.05.2022, the informant saw a tweet posted by the petitioner on his social media handle "twitter" on which, he used hate offensive term "hate mongers" against the respected manager of revered religious place Badi Sanghat, P.S. Khairabad and National Patron of National Hindu Sher Sena, Mahant Bajrang Muni Ji. Petitioner also insulted Hindu Yati Narasimha Nar Saraswati and Swami Anand Swaroop on his twitter.

Learned counsel for petitioner submits that petitioner through his tweet had not insulted or attempted to insult a religious belief of a class by his tweet and the impugned F.I.R. has been lodged against the petitioner just for harassment with oblique motive, hence the present F.I.R. is liable to be quashed.

Learned A.G.A., on the other hand, opposed the prayer for quashing of the F.I.R. and submitted that the petitioner is a habitual offender and earlier also he has been involved in making offensive tweets for which four cases have been registered against him, which is also mentioned in paragraph 34 of the writ petition, viz. Case Crime No. 194 of 2020 under Sections 67, 67-A of the Information Technology Act, Police Station Delhi Special Cell; Case Crime No. 131 of 2020 under Section 67 of the Information Technology Act and Section 509-B I.P.C. and Section 12 of the POCSO Act, 2012, Police Station Pandri, District Raipur, Chattisgarh; Case Crime No. 0199 of 2021 under Sections 192, 504, 506 I.P.C., Police Station Charthawal, District Muzaffarnagar; and Case Crime No. 502 of 2021, under Sections 153, 153-A, 295-A, 505, 120-B, 34 I.P.C., Police Station Loni Border, District Ghaziabad. He further argued that the impugned F.I.R. discloses a cognizable offence against the petitioner. Hence, the present writ petition is liable to be dismissed. In reply to the criminal antecedents of

the petitioner, the learned counsel for the petitioner states that he has been granted interim relief in some cases and in other released on bail.

Having heard learned Counsel for the parties and gone through record, it transpires that the entire matter is only at a premature stage and the investigation is not yet proceeded with except some preliminary effort taken on the date of the registration of the case, that is on 01.06.2022. The evidence has to be gathered after a thorough investigation and placed before the Court concerned on the basis of which alone the Court concerned can come to a conclusion one way or the other on the allegations levelled by the petitioner. If the allegations are bereft of truth and made maliciously, the investigation will say so.

The Supreme Court in the case of **Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and others** : 2021 SCC Online SC 315, has observed that the power of quashing should be exercised sparingly with circumspection in the rarest of rare cases. While examining an FIR/complaint, quashing of which is sought, the court cannot inquire about the reliability, genuineness, or otherwise of the allegations made in the FIR/complaint. The power under Section 482 Cr. P. C. is very wide, but conferment of wide power requires the court to be cautious. The Supreme Court has emphasised that though the court has the power to quash the FIR in suitable cases, the court, when it exercises power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider the case on merit.

Keeping in view the aforesaid law and considering the submissions raised by learned counsel for the parties, this Court is of the considered view that the submissions advanced by the

learned Counsel for the petitioner call for determination on questions of fact which may be adequately discerned either through proper investigation or which may be adjudicated upon only by the trial court and even the submissions made on points of law can also be more appropriately gone into only by the trial Court in case a charge sheet is submitted in this case. The perusal of the record makes out, *prima facie*, offences at this stage and there appears to be sufficient ground for investigation in the case.

In view of the aforesaid, the instant writ petition lacks merit and is, accordingly, **dismissed**.

[Ajai Kumar Srivastava-I, J.] [Ramesh Sinha, J.]

Order Date :- 10.6.2022

Shubhankar