

Court No. - 14

Case :- CRIMINAL REVISION No. - 167 of 2023

Revisionist :- Sudha Matanheliya

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.
And Another

Counsel for Revisionist :- Nagendra Mohan Singh, Pradeep
Kumar Sen

Counsel for Opposite Party :- G.A.

Hon'ble Suresh Kumar Gupta, J.

Heard learned counsel for appellant, S.P. Tiwari, learned A.G.A. for the State and perused the material available on record.

By means of this criminal revision, the revisionist has sought following prayer:-

"Wherefore, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to set aside order dated 27.01.2023 passed by learned Civil Judge (Junior Division)/ F.T.C./J.M. Bahraich in Criminal Case No. 3033 of 2022 whereby application moved by the complainant under Section 156 (3) Cr.P.C. has been allowed.

Learned counsel for revisionist has submitted that the order dated 27.01.2023 passed by learned Civil Judge (Junior Division)/ F.T.C./J.M. Bahraich in Criminal Case No. 3033 of 2022 is erroneous and beyond jurisdiction of learned Magistrate. The application moved under Section 156 (3) Cr.P.C. by the complainant with ulterior motive. The dispute relates to the landed property and the order passed by the learned Magistrate for registration of FIR and to investigate the matter is against the principles of law.

Mr. S.P. Tiwari, learned A.G.A. for the State has submitted that this revision is not maintainable against the order of allowing application under Section 156 (3) Cr.P.C. as the proposed accused has no legal right to be heard unless and until summoning order is passed against him.

In support of his submission learned A.G.A. has relied upon a judgment of Hon'ble Apex Court in the case of ***Union of India Vs. WIN Chaddha*** reported in ***1993 SCC (Criminal) 1171*** wherein Hon'ble Apex Court has held that a proposed accused in an application under Section 156 (3) Cr.P.C. has got no right

to be heard either on the application before the Magistrate or in revision before the revisional court. Hon'ble Apex Court has also affirmed the judgment of this Court in the case of ***Father Thomas Vs. State of U.P.*** reported in **2011 (72) ACC 564 (Allahabad) (Full Bench)** wherein this Court has held that an accused does not have any right to be heard before he is summoned by the Court under the Code of Criminal Procedure and he has got no right to raise any objection till the stage of summoning and resultantly he cannot be conferred with a right to challenge the order passed against him under Section 156 (3) Cr.P.C. prior to his summoning. If the Magistrate has allowed an application under Section 156 (3) Cr.P.C. directing the police to register FIR and investigate, revision against such order is not maintainable under Section 397 Cr.P.C.

Having heard learned counsel for parties and keeping in view the authority relied upon by the learned A.G.A., I do not find any illegality or infirmity in the impugned judgment and order dated 27.01.2023 passed by learned Civil Judge (Junior Division)/ F.T.C./J.M. Bahraich in Criminal Case No. 3033 of 2022.

Therefore, this revision is not maintainable and is accordingly dismissed.

Order Date :- 23.2.2023

Virendra