

**A.F.R.**

Neutral Citation No. - 2024:AHC-LKO:8457

**Court No. - 16**

**Case :-** MATTERS UNDER ARTICLE 227 No. - 414 of 2024

**Petitioner :-** Raj Kumar Saroj

**Respondent :-** State Of U.P. Thru. Prin. Secy. Home, Lucknow And Another

**Counsel for Petitioner :-** Ashok Kumar Singh, Mukesh Sharma

**Counsel for Respondent :-** G.A.

**Hon'ble Shamim Ahmed, J.**

1. Heard Sri Ashok Kumar Singh, learned counsel for the petitioner and Sri S.P. Tiwari, learned A.G.A.-I for the State as well as perused the record.
2. The instant petition under Article 227 of The Constitution of India has been filed with following relief:-

*“Wherefore, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to set aside the impugned order dated 19.01.2024 passed in Misc. Case No.554/2023 (State Vs. S.H.O. Mankapur, Gonda) by the Court of Additional District and Session Judge, Court No.3, Gonda.”*

3. Learned counsel for the petitioner submits that on 23.05.2015, police of Police Station Mankapur, District Gonda recovered a Truck bearing Registration No. UP-32-A-9016 and an F.I.R. was lodged as Case Crime No. Nil/2015, under Sections 41, 411, 413, 420, 467, 468, 487 I.P.C. at Police Station Mankapur, District Gonda, which was later on converted to Case Crime No.0999/2015.
4. He further submits that thereafter the matter was investigated by the Investigating Officer and charge sheet was submitted before the learned court below. He further submits that during trial on 23.08.2023, the court of learned Additional District and Sessions Judge, Court No.3, Gonda issued an order in Session Trial No.216 of 2018 directing the S.H.O. Kotwali Mankapur, Gonda to get the physical verification report of the case property i.e. Truck (Registration No. UP-32-A-9016). Thereafter, the S.H.O. Mankapur, Gonda sent a letter to the Regional Transport Officer, District Gonda for physical verification of the aforesaid truck. On 30.08.2023, the In-charge Inspector (S.H.O.), Police Station Mankapur, District Gonda submitted an application for extension of time for physical verification of the aforesaid truck.

5. He further submits that on 30.08.2023, the learned trial court issued a letter to the Superintendent of Police, Gonda directing him to take action against the S.H.O. Mankapur, Gonda and also to submit the physical verification report before the trial court. Thereafter, on 01.09.2023, the A.R.T.O., Gonda completed the physical verification of the truck and submitted its report to the S.H.O. Mankapur, Gonda, which was submitted by him before the learned trial court on 12.09.2023.

6. He further submits that on 26.09.2023, the learned trial court passed an order directing the office to register Misc. Case against the In-charge / S.H.O., Police Station Mankapur, District Gonda. Thereafter, on 03.10.2023, the learned trial court issued notice to the S.H.O. Mankapur to submit his explanation to the notice issued by opposite party no.2 personally on 10.10.2023. Further, on 10.10.2023, the then In-charge Inspector (S.H.O.), Police Station Mankapur, Gonda / petitioner submitted his report before the learned trial court stating therein that on 10.10.2023, he has taken charge of Police Station Mankapur, District Gonda.

7. He further submits that on 11.10.2023, the opposite party no.2 issued a notice to the then In-charge Inspector / S.H.O., Police Station Mankapur, Gonda to submit his explanation before the learned trial court personally on 19.10.2023. Thereafter, on 19.10.2023, the learned trial court issued a notice to the Superintendent of Police, District Baghpat directing him to produce the then S.H.O. Mankapur, District Gonda, namely, Sudhir Kumar Singh for evidence on 30.10.2023 in Misc. Case No.554 of 2023. However, the Superintendent of Police, Baghpat vide letter No. RI-Report/2023 dated 06.11.2023 informed the opposite party no.2 that Inspector Sudhir Kumar Singh has not reported in the District Baghpat till 06.11.2023. Thereafter, on 15.11.2023, the opposite party no.2 issued Non Bailable Warrant against the then S.H.O. Mankapur, namely, Sudhir Kumar Singh and directed the In-charge Inspector / S.H.O., Mankapur, Gonda to produce the accused on 30.11.2023. Thereafter, on 30.11.2023, the learned trial court issued notice to the petitioner for his evidence in Misc. Case No.554/2023.

8. He further submits that on 11.12.2023, the petitioner was on urgent duty hence he failed to appear on 11.12.2023 for adducing his evidence in Misc. Case No.554/2023. On 19.01.2024, the learned trial court passed the impugned order punishing the petitioner under Section 29 of the U.P. Police Act and lodging F.I.R. against the petitioner under Section 406 I.P.C.

9. He further submits that as per the report submitted by the Assistant Regional Transport Officer vide paper No.5-B, there is no allegation of theft or misappropriation of any valuable part of case property. The police arrested

the accused Ram Tirath with truck in question which contains different chasis number and engine number. The said truck was not registered in the office of R.T.O., Gonda and the number plate bearing no. U.P.-32-A-9016 is also false and fabricated. Even till date, no one has claimed the ownership of the said truck. He further submits that the sessions trial regarding the aforesaid crime is still pending and the alleged truck is the case property, hence, it could not be disposed of.

10. He further submits that the learned trial court had exceeded its jurisdiction by registering a Misc. Case against the then S.H.O. Mankapur, Gonda without mentioning that under which Section or Act the Misc. Case is being registered. He further submits that as per record, the Presiding Officer, the Opposite Party No.2 is complainant in the said Misc. Case and he himself tried the said Misc. Case in his own court which is against the law. He further submits that the learned trial court was supposed to send the matter for appropriate action to the competent authority / District Magistrate, Gonda for action under Section 29 of U.P. Police Act.

11. He further submits that no part of the truck is missing and no one has lodged any complaint about the misappropriation of any valuation security and even no one has claimed the ownership of said truck, hence, the prosecution under Section 406 I.P.C. as directed by the learned trial court is also an abuse of process of Court. He further submits that no case is made out against the petitioner under Section 406 I.P.C. as the petitioner has not committed any willful breach and is also not guilty of any violation of duty or neglect or any lawful order made by competent authority even he was also not a party in the Misc. Case No.554/2023, hence, the punishment order against the petitioner is absolutely illegal, arbitrary and malafide. He further submits that the impugned order suffers from material illegality and infirmity, which apparently from the face of record appears to be unsustainable in the law and the same is liable to be set aside as the same is passed in gross violation of law.

12. In support of his arguments, learned counsel for the petitioner has relied upon the judgment rendered by a Division Bench of this Court in the case of **Pramod Kumar Sharma Vs. State of U.P. & Others (Special Appeal No.1453 of 2010)**.

13. On the other hand, learned A.G.A.-I for the State submits that the impugned order has been rightly passed by the learned trial court after due consideration of material available before it, as such, it does not require any interference by this Court, therefore, the instant petition is liable to be dismissed at this stage only. He further submits that the petitioner having not

performed his duty in compliance of the direction of the Magistrate, the punishment was justified and the petitioner can avail of his remedies as available to him in law.

14. Having heard learned counsel for the parties and having perused the records, it is evident that the charge levelled by the learned Magistrate during the course of a judicial proceeding against the petitioner was of breach of duty by not complying with the directions of the Court. The learned Magistrate, therefore, proceeded to issue a notice to the petitioner calling for an explanation. This power was exercised by the Magistrate purportedly under Section 29 of the Police Act, 1861 which is gainfully reproduced bellow:-

*“Section 29. Penalties for neglect of duty, etc.- Every Police Officer who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice for the period of two months, or who, being absent on leave, shall fail, without reasonable cause, to report himself for duty on the expiration of such leave, or who shall engage without authority in any employment other than his police duty, or who shall be guilty of cowardice, or who shall offer any unwarrantable personal violence to any person in his custody shall be liable, on conviction before a Magistrate to a penalty not exceeding three months' pay, or to imprisonment, with or without hard labour, for a period not exceeding three months, or to both.”*

15. The said provision indicates that a person has to be found guilty of violation of duty or wilful breach or neglect of any rule or regulation or a lawful order made by competent authority, and if the same results in conviction by a Magistrate, then a penalty shall be imposed not exceeding three months pay or imprisonment in the manner prescribed therein.

16. The charge against the petitioner is of having breached the court's order which was a lawful order made by a competent Magistrate. The aforesaid willful neglect of duty or breach of duty has been made punishable, and from the U.P. Police Regulations, Chapter XXXII, it appears that a procedure has been provided to deal with such situations. The provisions relating to such enquiry if being undertaken under Section 29 of the Police Act 1861 are contained in Regulation 484 and 486 of the Police Regulations. Regulation 484 is quoted below:-

*“Regulation 484. The nature of the inquiry in any particular case will vary according to the nature of the offence. If the offence is cognizable or non-cognizable according to Schedule II of the Criminal Procedure Code and information of it is received by the District Magistrate he may in exercise of his powers under the Criminal Procedure Code either-*

*(1) Make or order a magisterial inquiry; or*

*(2) Order and investigation by the police.*

*If the information is received by a Magistrate other than a District Magistrate, and he takes cognizance of the offence, **he should report the case at once to the District Magistrate** who will withdraw it to his own Court under Section 528 (now Section 410/411), Criminal Procedure Code. The District Magistrate may then act as though the original complaint had been made to him.*

***This power extends to cases under Section 29 of the Police Act, but magisterial inquiry in cases under this section will be ordered only in very exceptional circumstances.***

17. A perusal of the aforesaid regulation indicates that the power to examine such a complaint has to be exercised by the District Magistrate in case the information has been received by a Magistrate other than a District Magistrate. The powers in the said regulations have been extended to cases under Section 29 of the Police Act.

Regulation 486 in relation to neglect of duty under Section 29 is quoted below:

***Regulation 486.** When the offence alleged against a police officer amounts to an offence only under Section 7 of the Police Act, there can be no magisterial inquiry under the Criminal Procedure Code. In such cases, and in other cases until and unless a magisterial inquiry is ordered, inquiry will be made under the direction of this Superintendent of Police in accordance with the following rules:-*

*(1) Every information received by the police relating the commission of a cognizable offence by a police officer shall be dealt with in the first place under Chapter XIV (now Chapter XII), Criminal Procedure Code, according to law, a case under the appropriate section being registered in the police station concerned provided that-*

*(1) if the information is received, in the first instance, by a Magistrate and forwarded by the District Magistrate to the police, no case will be registered by the police;*

*(2) if the information is received, in the first instance by the police, the report required by Section 165, Criminal Procedure Code, shall be forwarded to the District Magistrate, and when forwarding it the Superintendent of Police shall note on it with his own hand what steps are being taken as regards investigation or the reasons for refraining from investigation;*

*(3) unless investigation is refused by the Superintendent of Police under Section 157 (1)(b), Criminal Procedure Code and not ordered by*

*the District Magistrate under Section 159, or unless the District Magistrate orders a magisterial inquiry under Section 159, investigation under Section 159, Criminal Procedure Code, shall be made by a police officer selected : by the Superintendent of Police and higher in rank than the officer charged;*

*(4)On the conclusion of the investigation and before the report required by Section 173, Criminal Procedure Code, is prepared, the question whether the officer charged should or should not be sent for trial shall be decided by the Superintendent of Police. Provided that before an officer whose dismissal would require the concurrence of the Deputy Inspector General under paragraph 479 is sent for trial by the Superintendent of Police, the concurrence of the Deputy Inspector General must be obtained;*

*(5)the charge-sheet or final report under Section 173, or Section 169, Criminal Procedure Code, as the case may be, shall be sent to the District Magistrate; if the Superintendent of Police or the Deputy Inspector General had decided against a prosecution, a note by the Superintendent of Police giving the reasons for this decision shall be endorsed on, or attached to the final report;*

*(6)when the reason for not instituting a prosecution is that the charge is believed to be baseless, no further action will be necessary; if the charge is believed to be true and a prosecution is not undertaken owing to the evidence being considered insufficient or for any other reasons the Superintendent may, when the final report under Section 173, Criminal Procedure Code, has been accepted by the District Magistrate; take departmental action as laid down in paragraph 490.*

*II. When information of the commission by a police officer of a non-cognizable offence (including an offence under Section 29 of the Police Act) is given in the first instance to the police, the Superintendent of Police may, if he sees reason to take action, either (a) **proceed departmentally as laid down under head III of this paragraph and in paragraph 490**, or (b) as an alternative to, or at any stage of the departmental proceedings, forward a report in writing to the District Magistrate with a request that he will take cognizance of the offence under Section 190(1)(b), Criminal Procedure Code; provided that reports against Police Officers of having committed non-cognizable offences will (when made to the police and unless there are special reasons for desiring a magisterial inquiry or formal police investigation under the Code) **ordinarily be inquired into departmentally** and will not ordinarily and then only if be referred to the District Magistrate until departmental inquiry is complete, a criminal prosecution is desired.*

***On receiving information either by means of a report in writing from the Superintendent of Police as laid down above, or otherwise as laid down in Section 190(1)(a) and (c), Criminal Procedure Code, of the commission by a Police Officer of a non-cognizable offence, the District Magistrate may, subject to the general provisions of Chapter XV (now Chapter XIII), Part B, Criminal Procedure Code-***

*(a) proceed with the case under Chapter XVII (now Chapter XVI) Criminal Procedure Code;*

*(b) order an inquiry by a Magistrate or an investigation by the police under Section 202, Criminal Procedure Code; or an investigation by the police under Section 155(2);*

*(c) decline to proceed under Section 203, Criminal Procedure Code.*

*If an investigation by the police is ordered, it would be made under Section 155(3), Criminal Procedure Code by an officer selected by the Superintendent of Police and higher in rank than the officer charged and all further proceedings will be exactly as laid down for cognizable cases in paragraph 486 (1), (4), (5) and (6) above.*

*If no investigation by the police is ordered, and the District Magistrate, after or without magisterial inquiry, declines to proceed criminally with the case, **the Superintendent of Police will decide, in accordance with the principles set forth in paragraph 486 (1) (6) above and subject to the orders contained in paragraph 494, whether departmental proceedings under paragraph 490 are required.***

*III.- When a Superintendent of Police sees reasons to take action or information given to him, or on his own knowledge or suspicion, that a Police Officer subordinate to him has committed an offence under Section 7 of the Police Act or non-cognizable offence (**including an offence under Section 29 of the Police Act**) of which he considers it unnecessary at that stage to forward a report in writing to the District Magistrate under Rule II above he will make or cause to be made by an officer senior in rank to the officer charged, a departmental inquiry sufficient to test the truth of the charge. On the conclusion of this inquiry he will decide whether further action is necessary and if so, whether the officer charged should be departmentally tried, or whether the District Magistrate should be moved to take cognizance of the case under the Criminal Procedure Code; provided that before the District Magistrate is moved by the Superintendent of Police to proceed criminally with a case **under Section 29 of the Police Act** or other non-cognizable section of the law against an Inspector or sub Inspector, the concurrence of the Deputy Inspector General must be obtained. **Prosecution under Section 29 should rarely be instituted and only when the offence cannot be adequately dealt with under Section 7.**"*

18. The aforesaid provision also indicates that the matter shall be taken up by the Superintendent of Police departmentally or by the District Magistrate in manner indicated above. In the event the Magistrate himself takes notice of it then in view of the provisions of Section 190 Criminal procedure Code as referred to therein, the matter will have to be sent to another Magistrate for conducting the enquiry after putting the Officer to notice.

19. The procedure therefore makes it amply clear that the same Magistrate cannot be the witness and the judge himself. The procedure adopted by the learned Magistrate to proceed against the petitioner was therefore not in conformity with the provisions of Section 29 of the Police Act 1861 read with the Regulations referred to hereinabove.

20. The learned A.G.A.-I has not been able to point out any contrary provision or conferment of power on the Magistrate so as to allow him to proceed to convict the petitioner in the circumstances indicated above.

21. Accordingly, the order dated 19.01.2024 passed in Misc. Case No.554/2023 (State Vs. S.H.O. Mankapur, Gonda) by the Court of learned Additional District and Sessions Judge, Court No.3, Gonda is hereby **set aside** leaving it open to the competent authority to proceed in accordance with the provisions as indicated above in the event such powers can be invoked on the facts of the present case.

22. The writ petition is accordingly **allowed**.

23. No order as to the costs.

**(Shamim Ahmed, J.)**

**Order Date :- 30.1.2024**

Saurabh