

Court No. - 41

Case :- CRIMINAL MISC. WRIT PETITION No. - 2087 of 2018

Petitioner :- Sunil Kumar

Respondent :- State Of U.P. And Others

Counsel for Petitioner :- Sonu Kumar Tiwari

Counsel for Respondent :- G.A.

Hon'ble Rajesh Dayal Khare,J.

Hon'ble Rajiv Joshi,J.

Heard learned counsel for the petitioner and learned A. G. A. for the State.

This writ petition has been filed by the petitioner with a prayer to quash the F. I. R. dated 23.4.2016 which has been registered as Case Crime No. 105 of 2016, under Sections-376, 313, 380, 506 IPC, police station Ikotech, district Gautam Budh Nagar so far it relates to the petitioner.

It has been submitted by learned counsel for the petitioner that respondent No.3 had left her husband's house and started living with the petitioner. It is next contended that the allegation which has been levelled against the petitioner is that he had left respondent No.3 but subsequently the petitioner again came and is residing with respondent No.3 as is evident from the statement of respondent No.3 itself. It is contended that criminal proceedings against the petitioner at the behest of respondent No.3 is bad in law. It is next contended that after investigation, investigating officer submitted final report in the present case in which order has been passed for further investigation, which is bad in law. He further submitted that apart from the bald allegations made in the F. I. R., which is a bundle of lies and product of malice, no credible evidence is forthcoming, even *prima facie*, indicating that any such incident had taken place, hence the impugned F. I. R. is liable to be quashed.

Per contra, learned A. G. A. submitted that from the perusal of the impugned F. I. R. it cannot be said that no cognizable offence is made out, hence the impugned F. I. R. is not liable to be quashed.

From the perusal of the F.I.R. it appears that on the basis of the allegations made therein *prima facie* cognizable offence is made out hence, there is no scope for interfering with the impugned F. I. R.

Therefore, the prayer for quashing the impugned F. I. R. is refused.

However, considering the submissions advanced by learned counsel for the petitioner and nature of allegations made in the F. I. R., it is directed that the petitioner shall not be arrested in the aforementioned case till submission of police report under Section 173 (2) or till credible evidence is collected, whichever is earlier.

With the aforesaid directions, this writ petition is disposed of finally.

Order Date :- 31.1.2018

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