

Court No. - 1

Case :- CRIMINAL MISC. WRIT PETITION No. - 4603 of 2024

Petitioner :- Complainant/ Victim Of Case Crime No. 335/2024 Lko.

Respondent :- State Of U.P. Thru. Its Prin. Secy. Home Lko And 5 Others

Counsel for Petitioner :- Amit Srivastava

Counsel for Respondent :- G.A.

Hon'ble Attau Rahman Masoodi,J.

Hon'ble Ajai Kumar Srivastava-I,J.

1. Heard learned counsel for the petitioner and learned A.G.A., who appears for the State.

2. This petition has been filed by the petitioner with the following main prayers :-

"(i) issue a writ, or order, or direction in the nature of Mandamus commanding the respondent no.1-3 to take necessary action against the respondent no.5 & 6 for supporting the accused, rude behaviour with petitioner & slow/unfair investigation in the FIR no.335/2024 U/s- 323, 376, 313 IPC & 3/5 U.P. Anti religion conversion Act police Station Madiyaon, District- Lucknow.

(ii) issue a writ, or order, or direction in the nature of Mandamus commanding the respondent no.1-3 to take necessary action for fair and fast investigation in the FIR no.335/2024 U/s- 323, 376, 313 IPC & 3/5 U.P. Anti religion conversion Act police Station Madiyaon, District- Lucknow."

3. It is the case of the petitioner that an F.I.R. was lodged by him on 31.05.2024. The Investigating Officer is not taking interest in proper investigation of the case. Hence this petition has been filed.

4. The learned A.G.A., on the other hand, has raised a preliminary objection saying that for the relief, as claimed in this petition, the petitioner has remedy of filing an appropriate application before the Magistrate concerned in view of law laid down by Hon'ble the Supreme Court in **Sakiri Vasu Vs. State of U.P. and Others** reported in **(2008) 2 SCC 409**. For ready reference, paragraphs No.17 and 18 of **Sakiri Vasu's case (supra)** are quoted herein below :-

"**17.** In our opinion Section 156(3) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

18. It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution."

5. Accordingly, this petition is finally **disposed of** with liberty to the petitioner to move an appropriate application before the Magistrate concerned, who shall dispose of the same in the light of paragraphs No.17 and 18 of **Sakiri Vasu's case (supra)**.

(A.K. Srivastava-I, J.) (A.R. Masoodi, J.)

Order Date :- 28.6.2024

cks/-