

(2015) 07 AHC CK 0200

In the Allahabad High Court

Case No : Application u/S. 482 No. 17907 of 2015

Acharya Mahant Gangasaran Shastri and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Penal Code, 1860 (IPC) — Section 120-B, 34, 406, 419, 420

Citation : (2015) 5 ALJ 454

Hon'ble Judges : Naheed Ara Moonis, J.

Bench : Single Bench

Advocate : Manish Tiwary and Ashwini Kumar Awasthi, for the Appellant

Final Decision : Dismissed

Judgement

Naheed Ara Moonis, J.—Heard the learned counsel for the applicants, learned A.G.A. and perused the record. The instant petition has been filed by the applicants with a prayer to quash the entire proceeding of Case No. 560 of 2015 (State v. Vichar Das and others) whereby cognizance has been taken by the Additional Chief Judicial Magistrate-VII, district Varanasi under Sections 419 , 420 , 406 , 506 , 34 and 120-B , I.P.C., police station Sarnath, district Varanasi.

2. The submission of the learned counsel for the applicants that the first information report lodged on the basis of an application moved under Section 156 (3) , Cr.P.C. on 9.3.2013 against the applicants and other persons. On the basis of the first information report the police swung into action and submitted the charge sheet on 18.7.2013 in a perfunctory manner and the court below has taken cognizance against the applicants only on 14.4.2015. The dispute is purely civil in nature, which has been given colour of criminal prosecution. The first information report has been lodged merely on the assumption that the applicants were instrumental in misusing the Math for which the applicants were not authorized whereas there are clinching material showing that the applicants were in-charge of the Math by virtue of the Will. The investigating officer conducted

the investigation in biased manner and submitted the charge sheet against the 13 persons including the present applicants, thus the prosecution of the applicants is nothing but an abuse of the process of law.

3. Per contra learned A.G.A. has contended that there is no procedural illegality or perversity in taking cognizance against the applicants. The innocence of the applicants cannot be adjudged at the pre trial stage. After conducting the investigation the investigating officer submitted the charge sheet against the applicants and other persons. The civil and criminal proceedings are quite distinct.

4. From the perusal of the materials on record and looking into the facts and after considering the arguments made at the bar, it does not appear that no offence has been made out against the applicants.

5. At the stage of issuing process the court below is not expected to examine and assess in detail the material placed on record, only this has to be seen whether prima facie cognizable offence is disclosed or not. The Apex Court has also laid down the guidelines where the criminal proceedings could be interfered and quashed in exercise of its power by the High Court in the following cases:- (i) R.P. Kapur Vs. The State of Punjab, , (ii) State of Haryana and others Vs. Ch. Bhajan Lal and others, , (iii) State of Bihar and Another Vs. P.P. Sharma, IAS and Another, .

6. From the aforesaid decisions the Apex Court has settled the legal position for quashing of the proceedings at the initial stage. The test to be applied by the court is to whether uncontroverted allegation as made prima facie establishes the offence and the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing criminal proceedings to be continue. In S.W. Palanitkar and others Vs. State of Bihar and another, , it has been held by the Hon"ble Apex Court, that quashing of the criminal proceedings is an exception than a rule. The inherent powers of the High Court under Section 482 , Cr.P.C. itself envisages three circumstances under which the inherent jurisdiction may be exercised:- (i) to give effect an order under the Code; (ii) to prevent abuse of the process of the court; (iii) to otherwise secure the ends of justice. The power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.

7. The High Court would not embark upon an inquiry as it is the function of the Trial Judge/Court. The interference at the threshold of quashing of the criminal proceedings in case in hand cannot be said to be exceptional as it discloses prima facie commission of an offence. In the result, the prayer for quashing the proceeding is refused. There is no merit in this application filed under Section 482 , Cr.P.C., thus the same is accordingly dismissed. The applicants have ample opportunity to raise all the objections at the appropriate stage.

8. However, the applicants are directed to appear and surrender before the court below and apply for bail within a period of thirty days from today, the prayer for bail shall be considered expeditiously keeping in view of the settled law laid down

by the Seven Judges" decision of this Court in the case of Amarawati and Another (Smt.) Vs. State of U.P., and is also approved by the Apex Court in Lal Kamlendra Pratap Singh Vs. State of U.P. and Others, after hearing the Public Prosecutor.

9. In case the applicants fail to surrender within the stipulated period the court below shall take appropriate action against them.

10. It is always open for the applicants to move a discharge application before the court below, which was decided at the appropriate stage. For a period of 30 days the bailable warrant issued against the applicants shall be kept in abeyance.