
(2000) 03 AHC CK 0006
In the Allahabad High Court
Case No : Writ Petition No. 628 (MB) of 2000

Ali Shabbir

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-03-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164
Penal Code, 1860 (IPC) — Section 323, 366, 392, 498A, 506

Citation : (2001) 1 ACR 188

Hon'ble Judges : Virendra Saran, J;Naseem Uddin, J

Bench : Division Bench

Judgement

Virendra Saran, J.—Petitioner Ali Shabbir has preferred this writ petition for the protection of his personal liberty. The Petitioner is involved in Crime No. 465 of 1999, u/s 366, I.P.C. which has now been converted u/s 498-A/323/392/506, I.P.C. The case was initially registered at P.S. Aliganj on the strength of an F.I.R. lodged by Ashok Bhasin, resident of E-III/841, Sector-I, Aliganj, Lucknow. It was alleged in the F.I.R. that on 13th September, 1999, at 7 a.m. Ashok Bhasin's daughter Amrita Bhasin aged about 21 years left her house to appear in the LL.B. Examination of Lucknow University. She did not return home in the evening and searches for her proved futile. However, Ashok Bhasin was informed that his daughter had eloped with Prince Shabbir. The words in the F.I.R. are "PRINCE SHABBIR.....BAHLA PHUSLA KAR BULA LE GAYA HAI." So far as the Petitioner is concerned he happens to be the father of the boy Prince Shabbir.

2. Learned Counsel for the Petitioner has argued that the F.I.R. does not spell out any offence against the Petitioner and there is not even a whisper of any role played by the Petitioner. Learned Counsel also submitted that Amrita Bhasin, daughter of informant, wanted to live with Petitioner's son Prince Shabbir, but the Petitioner had neither any concern with the same nor he ever encouraged his son in any manner to have an affair with Amrita Bhasin. After hearing learned Government advocate we felt the necessity of summoning the case diary. The case diary was produced before us by the Circle Officer, Mahanagar, Lucknow,

who is presently investigating the case. We also summoned the statement of Amrita Bhasin alleged to be recorded u/s 164, Cr. P.C.

3. Petitioner Ali Shabbir is not named in the F.I.R. The case diary reveals that Prince Shabbir had telephoned brother of Amrita Bhasin and asked him to reach at the I.T. crossing where he left Amrita Bhasin in the evening of 13th September, 1999, itself. Accompanied by her brother, she returned home. Even though statement of Amrita Bhasin could have been recorded u/s 161, Cr. P.C. the same day it was not done. The case diary shows that her statement was not recorded on that day and even on the following day i.e. 14th September, 1999. The Investigating Officer remained contented by recording statements of three other witnesses and he did not make any endeavour to have first hand knowledge of events from Amrita Bhasin herself. It was after twenty days of the incident, i.e. 5th October, 1999, that statement of Amrita Bhasin purports to have been recorded by the Investigating Officer. This belated statement of Amrita Bhasin is that on 13.9.1999, when Amrita Bhasin came out of the University gate after giving her examination, she found Prince Shabbir along with his two friends in Maruti Van No. UP-32 K-6144. Prince Shabbir told Amrita Bhasin that Amrita's father was at his house and was making wild accusations against him. Prince Shabbir asked Amrita Bhasin to accompany him to clarify things. When Amrita Bhasin refused to accompany Prince Shabbir, he threatened to kill her father and gave out that he would forcibly take Amrita Bhasin with him whereupon she accompanied Prince Shabbir in his Maruti Van. Prince Shabbir took her to a place near a building with a signboard "Prince Property Dealer". Mother and father of Prince Shabbir also arrived there. Prince Shabbir told them that he wanted to marry Amrita Bhasin. The mother of Prince Shabbir opposed the idea and this led to a verbal exchange between Prince Shabbir on one hand and his parents on the other hand for some time. Thereafter, father of Prince Shabbir said that if he was bent upon marrying Amrita Bhasin, he may take her to Nainital where he will make arrangements. Father of Prince Shabbir also gave some money to Prince Shabbir. Thereafter, when Prince Shabbir asked Amrita Bhasin whether she was willing to marry him or not, Amrita Bhasin refused to marry Prince Shabbir whereupon he placed his lighted cigarette on her hand and started cutting the veins of her leg with a blade. The friend of Prince Shabbir asked Prince Shabbir not to do so. Thereafter, Prince Shabbir told Amrita Bhasin that he was allowing her to go home on that day, but if she did not marry him, he would kill her father. Thereafter, Prince Shabbir made a telephonic call at the house of Amrita Bhasin asking the household members of Amrita Bhasin to reach the I.T. crossing. Thereafter brother of Amrita Bhasin in the company of one of his friend arrived at I.T. crossing at about 9 p.m. and Amrita Bhasin was allowed to go with Prince Shabbir.

4. Even if we go by what emerges from the statement of Amrita Bhasin recorded by the Investigating Officer on 5th October, 1999, it is indicated that the mother and father of Prince Shabbir were opposed to the idea of Prince Shabbir marrying with Amrita Bhasin and they also did not permit him to stay at their house. The

only insinuation is that father of Prince Shabbir had told Prince Shabbir that if he was bent upon marrying Amrita Bhasin, he would make arrangement at Nainital and he gave some money to Prince Shabbir. Thus what appears is that the parents of Prince Shabbir were not at all in favour of Amrita Bhasin's marriage with their son Prince Shabbir, but since Prince Shabbir was bent upon going ahead with the marriage, his father said that he would make arrangements at Nainital and paid some money to his son. There is no further allegation which may spell out any offence against the Petitioner (father of Prince Shabbir) and on the other hand, it cannot be ruled out that since the Petitioner and his wife were not willing to take Amrita Bhasin to their house as their daughter-in-law, Prince Shabbir had no option but to part with Amrita Bhasin and for this reason he contacted the brother of Amrita Bhasin on telephone to come to I.T. crossing and take Amrita Bhasin with him. Further the delay in recording the statement of Amrita Bhasin casts a serious reflection on the prosecution case and learned Counsel for the Petitioner has submitted that since Amrita Bhasin did not support the prosecution case, her statement was not recorded for such a long time.

5. Next comes the statement of Amrita Bhasin recorded u/s 164, Cr. P.C. by v. Ith Additional Chief Judicial Magistrate, Lucknow on 11th October, 1999. There is not even a whisper in the case diary why recording of her statement u/s 164, Cr. P.C. was delayed for such a long time. Usually such statements are recorded at the earliest opportunity leaving no chance of tutoring or forcing the witness to give a desired statement. In the statement of Amrita Bhasin recorded u/s 164, Cr. P.C. there is a variance regarding the reason of Amrita Bhasin accompanying Prince Shabbir in his Maruti Van and there is a further allegation that Prince Shabbir took Amrita Bhasin to the house of his uncle and there is a further addition that Petitioner scolded Amrita Bhasin to keep silent and further told her that she will have to marry and told Prince Shabbir that if Amrita Bhasin refused to marry she may be done away with and thereafter the Petitioner left. It is further mentioned in the statement u/s 164, Cr. P.C. that there was some marpit with her in which her wrist watch was broken and Prince Shabbir also told her that she should ask her father to take back the earlier case. In this way we find that some allegation have come against the Petitioner after a month of the incident.

6. Learned State counsel has informed us that on the asking of the State Home Secretary the investigation was handed over to a Circle Officer and is being conducted at present by Circle Officer, Mahanagar, Lucknow at the present. The Circle Officer, Mahanagar produced the case diary before us in which a fresh statement of Amrita Bhasin is stated to be recorded on 2nd November, 1999. In this statement we find more allegations against the Petitioner and there is further allegation that Prince Shabbir had deprived Amrita Bhasin of a gold chain and Rs. 3000. The Investigating Officer has also noted that there was a faint extra mark and faint cut mark on the person of Amrita Bhasin.

7. Prior to what has been mentioned above, it is clear that the prosecution case

is being developed from stage to stage and more and more allegations are coming in allegedly from the mouth of Amrita Bhasin. It is also significant to note that the present Investigating Officer has not only added Section 392, I.P.C. in the case but has also added Section 498A, I.P.C. When we asked the Investigating Officer to point out the material for adding Section 498A, I.P.C., he conceded that there was not even a shred of evidence to show that at any stage Amrita Bhasin and Prince Shabbir were married and there was no material to attract the provisions of Section 498A, I.P.C. in the present case. Even addition of Section 392, I.P.C. is based upon the re-recording of statement of Amrita Bhasin u/s 161, Cr. P.C. The allegations of snatching the gold chain or the money are not to be found either in her statement first recorded u/s 161, Cr. P.C. or even in her statement u/s 164, Cr. P.C. recorded by the Magistrate. It is also significant to note that if Amrita Bhasin had sustained any burn injury by the cigarette or cut injury by a blade, it was not difficult to get her medically examined. Why the prosecuting agency did not have the courage of getting her medically examined. No explanation is to be found in this regard from the case diary. In the case diary there is prescription of a Homoeopath dated 13.9.1999, and on one side of the prescription it is noted. "C.O. (Complains of) cut mark of blade on leg, Painful, Inflamed". To us this prescription of the Homoeopath is not worth the paper on which it is written. The Homoeopath does not say that he himself see any cut mark etc. but simply noted that Amrita Bhasin complained of the same. At the foot of the prescription of the Homoeopath there is note. "Not valid for medico legal case." We have also come across an undated written statement signed by Amrita Bhasin which has been produced by the Investigating Officer. The scheme of Code of Criminal Procedure prohibits signing of statements which are recorded during investigation. When asked, the Investigating Officer drew blank to give any reason for obtaining such a writing from Amrita Bhasin and as a second thought he said that he did it so that Amrita Bhasin may not resile from her statement recorded by him. Had Amrita Bhasin been medically examined, it would have also shown what sort of girl she was, but it appears that pulls and pressures are working in this case and the Investigating Officer is under some pressure. We have also observed above that the investigation was made over to the Circle Officer, Mahanagar at the instance of the State Home Secretary. In the totality of circumstances, we are of the view that there is need of an impartial investigation by an independent agency in this case and the Petitioner should not be arrested till full facts are ascertained through investigation by an independent agency. We may also observe here that it appears from the materials placed on the record of the writ petition that the Petitioner is sufficiently advanced in age and has been doing respectable job. He was working as Librarian for the last 38 years in local Shia Degree College. Certain medical certificates has been filed showing that he has been keeping indifferent health. In view of this, the Petitioner may not be arrested unless there is some credible material collected pointing to his guilt.

8. Accordingly, we direct the Director-General of Police, U.P., Lucknow to get the

investigation of Crime No. 465 of 1999, of P.S. Aliganj, Lucknow be conducted by the C.B. C.I.D. We further direct that the arrest of the Petitioner may remain stayed in above crime number till filing of the charge-sheet, if any.

9. Learned Government advocate shall immediately inform the present Investigating Officer of the order passed today.

10. With the above direction this writ petition is disposed of finally.

A copy of this order shall be sent to the Director General of Police, U.P., Lucknow without delay.

Copies of this order shall also be supplied to learned Counsel for the parties on payment of necessary charges within a week.