
(2019) 08 MP CK 0046

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 10047 Of 2018

Anurag Sahu @ Chhotu Sahu

APPELLANT

Vs

State Of Madhya Pradesh & Ors.

RESPONDENT

Date of Decision : 05-08-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 482
Indian Penal Code, 1860 — Section 34, 120B, 323, 341, 365, 394, 467, 506
Constitution Of India, 1950 — Article 226

Citation : (2019) 08 MP CK 0046

Hon'ble Judges : Rajeev Kumar Dubey, J

Bench : Single Bench

Advocate : Mohammad Ali, M.K. Singh, B.K. Vaishya

Final Decision : Disposed Off

Judgement

1. This petition under Section 482 of the Cr.P.C. has been preferred by the applicant for quashing of FIR of Crime No. 369/2017 registered at G.R.P. Police Station Bina, Distt. Bina for the offence punishable under Sections 394, 365, 323, 506, 506, 341 of IPC and consequential proceedings arising out from that FIR and in alternate to direct the respondent to re-investigate the matter.

2. The brief facts of the case are that on 24.12.2017 complainant Kuldeep Singh Sikarwar lodged a report at G.R.P. Police Station Bina averring that he was working as Manager at Vyas Tea Stall situated at railway station Bina. At about 12 pm when he was at his tea stall applicant Anurag Sahu @ Chhotu Sahu and co-accused Javed Khan, Allu Kabadi, Jai Kumar Panchwani came there and forcibly took him on the point of the country-made pistol in the forest. Where they assaulted him due to which he sustained injuries on his back, neck and other body parts. They also took out Rs.70,000/- and mobile phone from his pocket. On that, police registered Crime No. 369/2017 for the offence punishable under Sections 394, 365, 323, 506 & 341 against the applicant and other co-accused persons. Being aggrieved from that applicant filed this present petition.

3. Learned counsel for the applicant submitted that on the date of incident i.e., 24.12.2017 applicant was not in Bina town itself. Applicant had left Bina on 23.12.2017 for visiting Thrivam Station (Goa) by Mangla-Lakshadweep Express along with his friends namely Zafaruddin Qazi, Azharuddin Qazi and Rakesh Bathri. On 24.12.2017 applicant had reached Thrivam Station (Goa) where he stayed in a hotel namely Blue Beach Holiday Homes. He also withdrew the amount from the ATM installed outside the Thrivam Station (Goa). All these facts are proved from the railway journey tickets, copies of bills of the hotel, call records and other documents. That documents clearly establish the presence of the applicant in Thrivam Station (Goa) at the time of the incident. Complainant by wrong impression mentioned his name in the FIR. Complainant himself admitted this fact and also filed an affidavit to the effect that he did not lodge any report against the applicant, so FIR be quashed. In alternate learned counsel for the applicant also submitted that because on the basis of documents i.e. the railway journey tickets, copies of bills of the hotel, call record etc. it is clearly established that at the time of incident applicant was at Goa. So, prosecution be directed to further investigate the matter in the light of applicant's documents.

4. In this regard, learned counsel for the applicant has placed reliance on the judgments of the Apex Court passed in the case of *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre*, (1988) 1 SCC 692, *Rukmini Narvekar v. Vijaya Satardekar*, (2008) 14 SCC 1 & *Nitya Dharmananda v. Gopal Sheelum Reddy*, (2018) 2 SCC 93.

5. Learned counsel for the respondent No.3 / complainant also submitted that complainant did not mention the name of the applicant as an accused in the FIR. Police wrongly mentioned the name of the applicant in the FIR. He does not want that any action be taken against the applicant.

6. Per Contra, it is submitted by the learned counsel for the State that the name of the applicant is mentioned in the FIR and the case diary statement of the complainant. So only on the basis that complainant filed an affidavit in favour of the applicant, at this stage, it cannot be said that the name of the applicant was wrongly written by the police in the FIR. Evidence is required to prove the documents produced by the applicant. So these documents cannot be read at this stage. From the FIR, offences under Sections 394, 323, 506, & 341 of IPC are clearly made out. So FIR cannot be quashed and prayed for the rejection of the petition.

7. This Court has gone through the record and arguments advanced by the learned counsel for the parties.

8. The facts of the case *Madhavrao Jiwajirao Scindia* (supra) relied upon by the learned counsel of the applicant do not match with the present case. In that case the allegations constituted civil wrong as the trustees created tenancy of trust property to favour the third party. A private complaint was laid for the offence under Section 467 read with Section 34 and Section 120-B IPC. The Apex Court

allowed the appeal and quashed the proceedings on the ground that even on its own contentions in the complaint, it would be a case of breach of trust or a civil wrong but no ingredients of criminal offence were made out. While in this case prima facie from the FIR, offence punishable under Section 394, 365, 323 & 506 of IPC are clearly made out against the applicant. The judgement passed by the Apex Court in *Madhavrao Jiwajirao Scindia (supra)* was reconsidered and explained by the Apex court in the case of *State of Bihar v. P.P. Sharma* 1992 Supp (1) SCC 222 and held "It cannot be considered that this Court laid down as a proposition of law that in every case the court would examine at the preliminary stage whether there would be ultimate chances of conviction on the basis of allegation and exercise of the power under Section 482 or Article 226 to quash the proceedings or the charge-sheet." So that judgment does not help the applicant.

9. Apex court in the case of *Nitya Dharmananda v. Gopal Sheelum Reddy*, (2018) 2 SCC 93 only held that "if the court is satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the court is not debarred from summoning or relying upon the same even if such a document is not a part of the charge sheet." While in this case there is no evidence on record to show that the documents produced by the applicant were collected by the prosecution during the investigation. So that judgments also do not help the applicant much.

10. Although Apex court in the case of *Rukmini Narvekar (supra)* held :- "In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted."

11. But at this stage, only that material can be considered which is beyond suspicion or doubt. While in this case applicant produced the railway ticket, bills of hotel and telephone record which cannot be read directly and evidence is required to prove that documents. So only on the basis of these documents, at this stage, it cannot be said that the complainant lodged a false report against the applicant.

12. Although complainant also filed an affidavit in support of applicant that applicant did not commit any crime and wrongly his name is mentioned in the FIR but in the FIR lodged by the complainant and even in the case diary statement of the complainant recorded by the police under Section 161 Cr.P.C., it is mentioned that applicant was also involved in the crime along with other co-accused. So, at this stage, only on the basis of the affidavit produced by the complainant it cannot be held that police wrongly mentioned the name of the applicant in the FIR. So, FIR cannot be quashed at this stage.

13. Although it appears from the record that investigation is going on against the

applicant. Police has not filed charge sheet against the applicant as yet. So the investigation officer of the crime is requested to check the authenticity of the applicant's defence. In case the applicant approaches him and filed the documents before him which he has filed before this court along with his petition.

14. The petition is disposed off accordingly.