

(2010) 10 AHC CK 0331
In the Allahabad High Court
Case No : Writ Petition No. 7819 (MB) of 2010

Anurag Verma

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 20-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 182
Evidence Act, 1872 — Section 145, 162
Penal Code, 1860 (IPC) — Section 323, 366

Citation : (2010) 10 AHC CK 0331

Hon'ble Judges : S.N.H. Zaidi, J;Rajiv Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the Petitioner and learned Additional Government Advocate.
2. The Petitioner claiming to be the brother of one Neetu Verma has filed the instant writ petition and prays for a direction commanding the opposite party No. 1 to take legal action against the Respondent Nos. 3, 4 and 5, namely, Circle Officer/Assistant Superintendent of Police, Station Officer and Investigating Officer of Case Crime No. 391/2010 for violation of law and harassing the Petitioner. It was also prayed for a direction to transfer the investigation of Case Crime No. 391/2010 to any other independent investigation police agency.
3. Brief facts of the present case are that the Petitioner has lodged an F.I.R. of Case Crime No. 391/2010 under Sections 366/323 IPC P.S. Aliganj, District Lucknow. As per version of First Information Report, on 7.8.2010 at about 21.45 hours, when the Petitioner and his sister, namely, Neetu Verma were returning from Punjab Technical University, Indira Nagar, near Nehru Vatika, the persons named in the F.I.R. abducted her sister and ran away in Bolero Jeep. As the investigation was not progressing, the instant writ petition has been filed for a

direction to the opposite parties to take legal action against the opposite party Nos. 3 to 5.

4. In response to the notice issued by this Court, a counter-affidavit has been filed wherein the factum of incident, as averred in the F.I.R., was denied. Further, it has been stated that Neetu Verma has not been kidnapped, but she being major has entered into matrimonial alliance with one Satish Kumar Shukla, S/o Devesh Kumar Shukla. The said matrimonial alliance was also registered and the certificate of marriage so solemnized was enclosed with the counter-affidavit including the passing out of High School Certificate, which discloses the date of birth of Neetu Verma as 26.1.1985. Further, the statements which were recorded u/s 161 Code of Criminal Procedure were also enclosed. In the said statements, the factum of incident, as referred in the First Information Report, was denied by the two independent witnesses including Neetu Verma.

5. Refuting the allegations made in the counter-affidavit, the Petitioner has filed his rejoinder affidavit, wherein it has been stated that the statements which were recorded u/s 161 Code of Criminal Procedure are recorded in a casual manner. Further, these are usable for corroboration or contradiction u/s 145 of 162 Evidence Act. Moreover initiation of proceedings u/s 182 Code of Criminal Procedure is out of vengeance by the police.

6. However, learned Counsel for the Petitioner submits that no statement of abducted girl Neetu Verma u/s 164 Code of Criminal Procedure has been recorded, which is incumbent on the authorities and as such, vide order dated 20.9.2010, this Court directed the opposite parties to get the statement of girl Neetu Verma recorded u/s 164 Code of Criminal Procedure.

7. In compliance of this Court's Order 20.9.2010, the statement of Neetu Verma u/s 164 Code of Criminal Procedure was recorded, a copy of where of is Annexure SA1 on record, wherein she has stated that she passed M.A. Examination in the year 2010 and she voluntarily solemnized her marriage out of sweet will with Satish Kumar Shukla on 19.2.2010 at Arya Samaj Mandir, Aliganj, Lucknow. After marriage, she is happily living with him and in future, she wants to live with him. Neither Satish Kumar Shukla kidnapped her nor he coerced her to give this statement.

8. In view of above statement, it reveals that she has married out of her sweet will with Satish Kumar Shukla and the incident as referred to in the First Information Report has not taken place and further, she has after solemnization of marriage been living with her husband, namely, Satish Kumar Shukla and as such, lodging of F.I.R. by the Petitioner is out of vengeance. Further, vide order dated 27.8.2010 this Court directed Shri Kalyan Singh Sagar, Station Officer, Aliganj, Lucknow, Investigating Officer and Deputy Inspector General of Police, Lucknow to appear in person on 31.8.2010. In compliance of order dated 27.8.2010 Shri Kalyan Singh Sagar, Station Officer, Aliganj, Lucknow, Investigating Officer and Deputy Inspector General of Police, Lucknow were

present in person.

9. In *Prestige Lights Ltd. Vs. State Bank of India*, , it was held that in exercising power under Article 226 of the Constitution of India, the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under Article 226 of the Constitution is duty bound to place all the facts before the court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain petition filed under Article 226 of the Constitution. The Apex Court referred to the judgment of Scrutton, LJ. in *R. v. Kensington Income Tax Commissioners*, and observed:

In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the Applicant does not disclose full facts or suppresses relevant materials or is otherwise-guilty of misleading the Court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

10. In *Welcom Hotel and Others Vs. State of Andhra Pradesh and Others*, , the Apex Court has held that a party which has misled the Court in passing an order in its favour is not entitled to be heard on the merits of the case.

11. In *K.D. Sharma v. Steel Authority of India Ltd. and Ors.*, the Apex Court has held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the Petitioner approaching the Writ Court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the Petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. The same rule was reiterated in *G. Jayashree and Others Vs. Bhagwandas S. Patel and Others*,

12. In a recent decision of *Dalip Singh Vs. State of U.P. and Others*, the Apex Court has held that the making of patently false statement on oath by the Appellant tenure-holders is amazing. The Appellants efforts to mislead the authorities and the courts got transmitted through three generations and the conduct of the Appellant and his son to mislead the High Court and the Supreme Court cannot, but treated as reprehensible.

13. From what we have mentioned above, it is clear that the Petitioner has lodged the First Information Report out of vengeance and thereafter, the case has been listed on numerous occasions. As stated above, Shri Kalyan Singh

Sagar, Station Officer, Aliganj, Lucknow, Investigating Officer and Deputy Inspector General of Police were directed to appear in person. Such type of practice should always be discouraged and is highly deprecated. They belong to the category of persons who not only attempt, but succeed in polluting the course of justice. Therefore, this Court would like to impose costs for wasting the precious time.

14. In view of the above, the writ petition is dismissed with Rs. 1,00,000/- as costs. The costs is being awarded in view of the Apex Court's decision in Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), The Petitioner is directed to deposit the cost of Rs. 1,00,000/- before the Registrar of this Court within a month, failing which, the District Magistrate concerned will recover the same from the Petitioner and after recovering the same, it shall be transmitted to the Registrar of this Court, who in turn, shall transmit the same to the account of Mediation and Conciliation Centre, High Court, Lucknow Bench, Lucknow within seven days from the date of receipt/realization.