

(2015) 07 AHC CK 0177

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. 16142 of 2015

Aqil

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 08-07-2015

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 173(2)
Penal Code, 1860 (IPC) — Section 395

Citation : (2015) 3 ACR 3454 : (2015) 90 ALLCC 760

Hon'ble Judges : Sudhir Agarwal, J;B.K. Srivastava-II, J

Bench : Division Bench

Advocate : Imran Khan, for the Appellant

Final Decision : Dismissed

Judgement

Sudhir Agarwal and B.K. Srivastava II, JJ.—Heard learned Counsel for petitioner and perused the record. By means of present writ petition, petitioner is seeking quashing of first information report dated 31.8.2014, registered as Case Crime No. 500 of 2014, under section 395, Police Station Daurala, District Meerut.

2. It is contended that vehicle in question is registered in the name of petitioner and though initially he had agreed to sell it after receiving Rs. 25,000/- but subsequently informant said that he does not want to purchase the vehicle and the money and vehicle changed the hands. Hence there is no question of any crime being committed by petitioner and therefore first information report does not disclose any cognizable offence and is liable to be quashed.

3. It is further contended that in the similar matters this Court has passed order in cases of some other persons providing protection against arrest and one of such order dated 8.9.2014 passed in Criminal Misc. Writ Petition No. 15597 of 2014 is referred to, which reads as under:

"Learned A.G.A. has accepted notice on behalf of the opposite party Nos. 1 and 2.

Issue notice to the opposite party No. 3.

Each one of the respondent is accorded six weeks time to file counter affidavit.

Rejoinder affidavit may also be filed within two weeks thereafter.

List after eight weeks.

It has been submitted on behalf of the petitioners that as far as Bolero Car in question is concerned, same has been registered in the name of the petitioner No. 1. It has also submitted that after some time, the petitioner No. 1 has sold his Bolero Car to the informant for sum of Rs. 5,35,000/- and the informant has given Rs. 25,000/- as a taken money against the said vehicle in question and the petitioner No. 1 had handed over his car on the commitment that the ownership will be transferred after the whole payment but at later point of time, he did not fulfill the commitment as such vehicle in question was returned back to the petitioner No. 1 on account of intervention of relatives, and such situation was not relished by informant and petitioners" submission is that FIR in question has been lodged mentioning therein incorrect statement of facts in order to harass and victimize the petitioners.

Prima facie arguments advanced appears to have some substance and requires consideration by this Court as such pursuant to impugned F.I.R. dated 31.8.2014 registered as Case Crime No. 500 of 2014, under section 395 I.P.C., P.S. Daurala, District Meerut, petitioners may not be arrested till submission of police report, under section 173(2) Cr.P.C., and the petitioners shall extend full cooperation in the investigation and shall not interfere with the ongoing investigation."

4. Having heard learned Counsel for petitioner, we do not find any merit in the submissions.

5. Once it is admitted that petitioner has sold the vehicle to another person, the mere fact that ownership was not changed in the documents would not mean that at the subsequent stage, the incident with respect to return of vehicle and refund of money etc. could not have taken place at all. Moreover, the first information report also discloses the factum of threat of killing and snatching of vehicle etc. The offence, therefore, under section 395 I.P.C. prima facie is disclosed by a bare reading of first information report, if the allegations mentioned therein are taken to be true on its face.

6. Now so far as the order passed by This Court in Writ Petition No. 15597 of 2014 (Iqbal and others v. State of U.P.) is concerned, we do not find that any law has been laid down therein. It is an interim order and does not lay down any law. Here we are deciding this matter finally. In the entire writ petition, with regard to alleged apprehension that Police is illegally going to arrest the petitioner, no factual foundation has been laid down. The only averment contained in this regard reads as under:

"16. That, it categorically submitted here that the statement of deponent was not

recorded by the police and if there is any statement written by the police in case diary, that is not admissible under Indian Evidence Act 1872 and therefore, petitioner may be protected by this Hon''ble Court under article 226 of the Constitution of India.

17. That, it is also important to submit here that the allegation of Loot of money has been narrated in the FIR to give colour the case otherwise the petitioner is well to do and his family is much richer than the informant.

18. That, it is also important to submit here that if prosecution story is taken to be true even then no prima facie offence under section 395 IPC is made out against the petitioner, therefore it is fit case where this Hon''ble Court may protect the right of petitioner as guaranteed under article 21 of the Constitution of India.

19. That, the lodging of first information report is manifestly attained with mala fide intention and same were malicious instituted with ulterior motive, therefore, it is a fit case where the Hon''ble Court may kindly be pleased to command the police not to arrest the petitioner in the present case during the pendency of the present writ petition.

20. That, the petitioner is law abiding peace loving and reputed person and has neither committed any offence or has been prosecuted by any Court of law and he is innocent and has been falsely made accused in the present case to put his pressure, otherwise, he has no concerned at all.

21. That, the respondent No. 2 without collecting any credible evidence are bent upon to arrest the petitioner and in such circumstances any action on the basis of impugned parcha No. 3 dated 5.9.2014 in pursuant of the FIR will caused prejudice to the rights of the petitioner.

22. That Hon''ble Supreme Court in the case of Jogender Kumar v. State of U.P. 1994 ACC 431 (SC) had held that it is not necessary to arrest the accused persons in a routine manner."

7. The allegations are extremely vague and show that since the first information report has been lodged, therefore, the Police may arrest the petitioner and that cannot be done without collecting credible evidences, therefore, arrest of petitioner should be stayed.

8. Whenever an allegation is made that Police is proceeding to arrest a person illegally, background of factual pleading must be there as to who is proceeding to do something which is apparently illegal. Police possesses statutory power of arrest but in every case where a first information is lodged, arrest is not an automatic consequence, but the Investigating Officer has to decide on the basis of facts and circumstances as to whether arrest of a person is necessary or not and taking into account all the circumstances, he can proceed to arrest the accused persons.

9. In the present case, there is no pleading that such satisfaction has or has not been formed by Police authorities who is proceeding to illegally arrest the petitioner. In absence of any such factual background, no vague order restraining arrest by police, which is statutory power of Police, is supposed to be passed. The prayer made by petitioner is thoroughly misconceived, based on no pleading and has to be rejected. In view of above, we do not find any merit in the writ petition. Dismissed.