

(1992) 02 AHC CK 0045

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 203 of 1992

Ashok Kumar Singh and Others

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 18-02-1992

Acts Referred:

Constitution of India, 1950 — Article 136
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1993) CriLJ 2083

Hon'ble Judges : K.C. Bhargava, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.C. Bhargava, J.—This is a petition u/s 482, Cr. P.C. for quashing the FIR and for directing that the petitioners be not arrested during the investigation. The petition is opposed.

2. Heard the learned counsel for the petitioners and the learned Additional Government Advocate.

3. Learned counsel for the petitioners has argued that in proceedings u/s 482, Cr. P.C. the Court has ample power to stay the arrest of the petitioners. In support of his contention the learned counsel for the petitioners placed reliance on the case of State of Bihar and Another Vs. P.P. Sharma, IAS and Another, A perusal of this case goes to show that it is no authority for the proposition that the arrest of an accused can be stayed in proceedings u/s 482, Cr. P.C. Learned counsel for the petitioners has argued that by implication this power vests in the court u/s 482, Cr. P.C. From a perusal of this case law, it does not go to show that this court by implication has also any power to stay the arrest of an accused.

4. Reliance has also been placed on the case of Delhi Judicial Service Association, Tis Hazari Court, Delhi Vs. State of Gujarat and others, In this case also there is no observation of the Hon''ble Supreme Court that the arrest of an accused can

be stayed under the provisions of Section 482, Cr. P. C. during the course of investigation. In that case the Hon''ble Supreme Court acted under the provisions of Article 136 of the Constitution of India, but in that case also the Court had not stayed the arrest of the accused but has quashed the proceedings pending against him. No doubt, it is true that the Court has power to quash proceedings at the stage of the FIR when no offence is made out from the FIR and on certain other grounds which have been laid down by the Hon''ble Supreme Court in different case laws.

5. A reference may be made to the case of Ram Lal Yadav and Others Vs. State of U.P. and Others, The Full Bench of seven Judges of this Court has ruled in this case that during investigation the Court has no power u/s 482, Cr. P.C. to stay the arrest of an accused. This observation of the Full Bench has not been overruled by the Hon''ble Supreme Court in any of the cases referred to by the learned counsel for the petitioner. Learned counsel for the petitioner could not produce any authority of the Supreme Court to show that the Court possesses power to order stay of arrest of the petitioners under the provisions of Section 482, Cr. P.C. Therefore, this argument of the learned counsel for the petitioners cannot be accepted.

6. The next contention of the learned counsel for the petitioners is that the FIR does not disclose any offence. To support this argument he has argued that the present FIR has been lodged after a delay of 28 days and further that an FIR was previously lodged by the accused of this case against the complainant. No doubt, it is true that the incident took place on 29-12-1991 and the FIR was lodged on 26-1-1992. Even accepting that there is delay in lodging the FIR in this case, it cannot be said that the allegations mentioned in the FIR are false and no case is made out, against the petitioners. It is further argued that a previous FIR was also lodged by the accused of this case against the complainant and this shows the falsity of the case of the complainant. From this fact by itself it cannot be said, at this stage, that the FIR is false. All these facts have to be gone into during the course of investigation and if charge-sheet is submitted then these facts can only be established during the course of trial of the case and this Court, at this stage, cannot say that the FIR which has been lodged in the present case against the petitioner is false. No such inference can be drawn on the basis of the two facts which have been pointed out by the learned counsel for the petitioners. A perusal of the FIR goes to show that it does disclose commission of offence and as such the FIR cannot be ordered to be quashed.

The petition has no force and it is dismissed.