
(2012) 01 AHC CK 0100

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. - 170 of 2012

Banke Lal Kesharwani and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 41(1), 41A
Penal Code, 1860 (IPC) — Section 380, 411, 448

Citation : (2012) 01 AHC CK 0100

Hon'ble Judges : Vinay Kumar Mathur, J;Devendra Pratap Singh, J

Bench : Division Bench

Advocate : Amit Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioners and learned Additional Government Advocate. This writ petition has been filed for quashing an FIR and staying the arrest of the petitioner in Case Crime No. 522 of 2011, u/s 380, 411, 448 IPC, police station Naini district Allahabad.

2. It cannot be said that on the allegations in the FIR, no prima facie case is disclosed.

3. However, by the amendment vide Act No. 5 of 2009, which has been notified on 01.11.2010, it has been provided in Section 41(1) (b) Cr.P.C. that a person against whom credible information of being involved in a cognizable offence punishable with imprisonment of 7 years or less is reported to the police officer, the accused can only be arrested if the police officer is satisfied that:

(a) there is probability of the accused committing another offence,

(b) for proper investigation of the offence,

(c) to prevent such person from causing the evidence of the offence to disappear or his tampering with the evidence in any manner,

(d) to prevent such person from making any inducement, threat or promise to the witnesses to disclose such facts to the court or to the police,

(e) unless the person is arrested, his presence in court could not be ensured and the police officer has to record the reasons in writing before making such arrest.

4. The present case is one punishable with imprisonment up to 7 years. The petitioner should, therefore have no apprehension that he would be arrested unless there are conditions justifying his arrest as mentioned above and provided u/s 41(1)(b) Cr.P.C.

5. Also under the newly introduced provision, section 41A Cr.P.C. (which has also been added by Act No. 5 of 2009, effective from 1.11.2010), in all cases where the arrest of such an accused is not needed in view of the provisions of section 41 (1) Cr.P.C., the police officer concerned is required to issue a notice directing the accused to appear before him at a specified place and time. However if at any time the accused fails to comply with the terms of the notice, or fails to identify himself, or the police officer is of the opinion that the arrest is required, he may arrest the said accused after recording his reasons for the same. The police powers of arrest will be subject to any orders that may have been passed by the Competent Court.

6. In case the police officer arrests the accused the Magistrate before whom the accused is produced for an order of remand, shall examine the reasons mentioned in the case diary for arresting the accused for satisfying himself that the arrest has been made in accordance with the exceptional circumstances indicated in sections 41(1) (b) and 41A Cr.P.C described hereinabove. In case the Magistrate is of the opinion that the arrest has not been made in a bona fide manner, or the grounds for arrest mentioned do not conform with the criteria set out in sections 41(1)(b) or 41A, or there is no material to substantiate the reasons for arrest, the Magistrate may refuse to remand the accused to custody and may release the accused on personal bond with or without sureties after taking an undertaking from the accused to appear before the investigating officer or the Court when required.

7. The DGP, U.P. has also issued a circular dated 3.10.11 directing all subordinate police officers to refrain from routinely arresting accused persons wanted in cases punishable with up to 7 years imprisonment and for strictly complying with the special conditions mentioned in section 41(1)(b) and 41A Cr.P.C before effecting an arrest in any case for which he has also to record his reasons.

8. The DIG/ SSP/ SP of the district concerned, shall also ensure compliance of this order and the provisions of section 41 (1) and section 41A Cr.P.C. and the DGPs circular and monitor the genuineness of the reasons given by the investigating officer in case the accused has been arrested.

9. Subject to the aforesaid observations we find no ground for interfering in the matter. The writ petition is accordingly dismissed.