
(2015) 06 AHC CK 0004
In the Allahabad High Court
Case No : Application No. 16264 of 2015

Bhagwati and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 15-06-2015

Acts Referred:

Constitution of India, 1950 — Article 141, 21, 32
Criminal Procedure Code, 1973 (CrPC) — Section 438, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 323, 406, 498-A

Citation : (2015) 06 AHC CK 0004

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : M.K. Kushwaha and Mahima K. Kushwaha, for the Appellant

Final Decision : Dismissed

Judgement

Sudhir Agarwal, J.—Heard learned counsel for applicants and learned A.G.A.

2. This application under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") seeks quashing of charge-sheet dated 12.12.2014 in Case Crime No. 524 of 2014, under Sections 498-A and 323 I.P.C. and Section 3/4 of Dowry Prohibition Act, Police Station Sikandrara, District Hathras. The usual grounds taken are that the applicants have been implicated falsely, they are innocent, Police has not made investigation properly, there is no credible evidence and the entire proceedings are on account of enmity etc.

3. Police has submitted charge-sheet against all the applicants.

4. Counsel for applicants states that he is pressing the matter on behalf of applicants No. 4 to 8, who are brothers-in-law and their wives.

5. However, from the material placed on record, this Court find that police has collected prima facie evidence against all the accused persons and rest of the matter is subject to trial. At this stage, it cannot be said that charge-sheet per se

deserves to be quashed in respect to the applicants No. 4 to 8.

6. The power under Section 482 Cr.P.C. is not to be exercised in a routine manner, but it is for limited purposes, namely, to give effect to any order under the Code, or to prevent abuse of process of any Court or otherwise to secure ends of justice. Time and again, Apex Court and various High Courts, including ours one, have reminded when exercise of power under Section 482 Cr.P.C. would be justified, which cannot be placed in straight jacket formula, but one thing is very clear that it should not preempt a trial and cannot be used in a routine manner so as to cut short the entire process of trial before the Courts below. If from a bare perusal of first information report or complaint, it is evident that it does not disclose any offence at all or it is frivolous, collusive or oppressive from the face of it, the Court may exercise its inherent power under Section 482 Cr.P.C. but it should be exercised sparingly. This will not include as to whether prosecution is likely to establish its case or not, whether the evidence in question is reliable or not or whether on a reasonable appreciation of it, accusation would not be sustained, or the other circumstances, which would not justify exercise of jurisdiction under Section 482 Cr.P.C. I need not go into various aspects in detail but it would suffice to refer a few recent authorities dealing all these matters in detail, namely, State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604 : (1992) CriLJ 527 : (1990) 4 JT 650 : (1990) 2 SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp , Popular Muthiah Vs. State represented by Inspector of Police, (2006) 6 JT 332 : (2006) 6 SCALE 417 : (2006) 7 SCC 296 : (2006) 3 SCR 100 Supp , Hamida Vs. Rashid @ Rasheed and Others, (2008) 105 CLT 410 : (2007) CriLJ 3422 : (2007) 6 JT 392 : (2007) 6 SCALE 517 : (2007) 1 SCC 474 : (2007) 5 SCR 937 , Dr. Monica Kumar and Another Vs. State of U.P. and Others, (2008) 7 JT 194 : (2008) 9 SCALE 166 : (2008) 8 SCC 781 , M.N. Ojha and Others Vs. Alok Kumar Srivastav and Another, AIR 2010 SC 201 : (2009) CLT 1697 : (2009) CriLJ 4642 : (2009) 10 JT 590 : (2009) 11 SCALE 573 : (2009) 9 SCC 682 : (2009) 13 SCR 444 , State of A.P. Vs. Gourishetty Mahesh and Others, (2010) CriLJ 3844 : (2010) 6 JT 588 : (2010) 11 SCC 226 : (2011) 1 SCC(Cri) 142 : (2010) 8 SCR 423 : (2010) 7 UJ 3259 and Iridium India Telecom Ltd. Vs. Motorola Incorporated and Others, AIR 2011 SC 20 : (2010) 160 CompCas 147 : (2010) 11 JT 492 : (2011) 1 RCR(Criminal) 235 : (2011) 1 SCC 74 : (2011) 106 SCL 28 : (2010) 10 UJ 5258 : (2010) AIRSCW 6738 .

7. In Lee Kun Hee and Others Vs. State of U.P. and Others, AIR 2012 SC 1007 : (2012) CriLJ 1551 : (2012) 2 JT 237 : (2012) 1 RCR(Criminal) 884 : (2012) 2 SCALE 152 : (2012) 3 SCC 132 : (2012) AIRSCW 1316 , it was reiterated that Court in exercise of its jurisdiction under Section 482 Cr.P.C. cannot go into the truth or otherwise of the allegations and appreciate evidence, if any, available on record. Interference would be justified only when a clear case of such interference is made out. Frequent and uncalled interference even at the preliminary stage by High Court may result in causing obstruction in the progress of inquiry in a criminal case which may not be in public interest. It, however, may

not be doubted, if on the face of it, either from the first information report or complaint, it is evident that allegation are so absurd and inherently improbable on the basis of which no fair-minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding, in such cases refusal to exercise jurisdiction may equally result in injustice, more particularly, in cases, where the complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint.

8. However, in this matter, after investigation, Police has found a prima facie case against accused and submitted charge-sheet in the Court below. After investigation the police has found a prima facie case of commission of a cognizable offence by accused which should have tried in a Court of Law. At this stage there is no occasion to look into the question, whether the charge ultimately can be substantiated or not since that would be a subject matter of trial. No substantial ground has been made out which may justify interference by this Court under Section 482 Cr.P.C.

9. The learned counsel for applicants then submitted that applicants may be allowed some time to surrender and a direction be issued to court concerned to consider their bail application on the same day and also to follow the law laid down in Joginder Kumar Vs. State of U.P. and others, AIR 1994 SC 1349 : (1994) CriLJ 1981 : (1994) 2 Crimes 106 : (1994) 3 JT 423 : (1994) 2 SCALE 662 : (1994) 4 SCC 260 : (1994) 3 SCR 661 , Lal Kamendra Pratap Singh Vs. State of U.P. and Others, (2009) 7 JT 327 : (2009) 4 SCALE 77 : (2009) 4 SCC 437 : (2009) 4 SCR 1027 : (2009) 4 UJ 1588 and Amarawati and Another (Smt.) Vs. State of U.P., (2005) 1 AWC 416 : (2005) CriLJ 755 : (2005) 1 UPLBEC 155 . He also requested that till then arrest of applicants be stayed and placed certain orders of this Court wherein such directions have been issued. He pointed out that hundreds and thousands such orders have been passed by this Court and, therefore, following the principle of parity similar direction must be issued in this case also.

10. I propose to examine on this aspect of the matter with deeper scrutiny. It is not the case of applicants that they have already surrendered or that though they have attempted to surrender but there is any illegal, unauthorised obstruction created by respondents in such endeavour of applicants. It is also not the case that any authority of this Court or Apex Court though cited before court concerned but it has refused to consider the same or ignored. No allegations have been made that the court concerned is acting contrary to law or the Presiding Officer has any kind of bias etc. so as to pass an order without looking into the matter in accordance with law.

11. The law laid down by Apex Court by virtue of Article 141 of the Constitution of India, is binding on all courts and authorities across the nation and everybody is supposed to act in the aid and enforcement of such law laid down by Supreme Court. There is no presumption that courts below shall not follow the law laid

down by Supreme Court. There is also no presumption that a decision of Supreme Court laying down certain law, if cited, in support of arguments by a party, before a court, they would not be looked into and appreciated by such court. To follow the law laid down by Supreme Court, no sanction or approval or direction of this Court is required. To ask for such direction, when there is no factual foundation in the application, is nothing but doubting the capability, approach and efficiency of subordinate courts, which is not in the larger interest of institution as such. Moreover, in absence of any factual foundation, it is well established that no futile or uncalled for directions are to be issued by this Court. Its hand are already full of work and rather extremely loaded therewith, hence entertaining cases just for futile direction, which ex facie deserved to be dismissed, would be nothing but encouraging avoidable unnecessary burden upon this Court.

12. Even otherwise a direction to follow a decision of Apex Court without appreciating, whether it applies on the facts and circumstances of the case and would be cited by parties concerned, is like anticipating something, which is not existing in presenti and on the facts of the case, may not be applicable.

13. I may illustrate on this aspect by looking into the aforesaid decisions in detail, which the learned counsel or applicants intended to be considered by courts below, under a direction of this Court, though I am not sure whether it would actually be cited by counsel of accused applicants when they would be presenting their case before court below.

14. In *Joginder Kumar (supra)*, a habeas corpus writ petition under Article 32 of the Constitution was filed before Supreme Court alleging about unlawful detention of petitioner (a practising lawyer) by police authorities and seeking his release. The Senior Superintendent of Police, Ghaziabad appeared before Court and admitted to have detained petitioner for five days, not in detention but for taking his help in inquiry/investigation of an offence of abduction. Since the petitioner was already released by police, the Court found that relief in habeas corpus now cannot be granted. Yet it enquired as to how and in what circumstances, without informing the court concerned, an individual could be detained by police for five days. The Court found it a case of massive violation of human rights, besides the statutory legal provisions relating to arrest etc. The Court held that law of arrest is one of balancing individual rights, liberties and privileges, on the one hand; and, individual duties, obligations and responsibilities on the other hand. The Court said that an arrest cannot be made merely for the reason that a police officer is empowered under law to do so. The existence of power is one thing and justification for exercise thereof is another. Genuine, justified and satisfactory reasons must exist before a police officer should go to arrest a person so as to curtail his fundamental right of life and liberty. A person is not liable to arrest merely on suspicion of complicity of offence. Except in heinous offences, an arrest must be avoided unless there exists reason therefor. That was not a case where after inquiry or investigation

by police, a charge sheet was filed and thereupon an incumbent was to surrender himself to the Court, and the power of Court either to release him on bail if so requested, or to sent him in judicial custody was under consideration.

15. This decision then was considered in D.K. Basu Vs. State of West Bengal, AIR 1997 SC 610 : (1997) CriLJ 743 : (1996) 4 Crimes 233 : (1997) 1 JT 1 : (1996) 9 SCALE 298 : (1997) 1 SCC 416 : (1996) 10 SCR 284 Supp : (1997) AIRSCW 233 : (1996) 8 Supreme 581 which was a public interest litigation entertained by Supreme Court taking cognizance of a letter received from Executive Chairman, Legal Aid Services, West Bengal complaining about certain custodial deaths.

16. Apparently the aforesaid decision also strictly has no application to the nature of dispute involved in this application as also the stage at which question, as to whether the petitioner should be detained in jail or not, has to be considered. Here it is not the case of exercise of power by police but the judicial discretion of Court and thereto nothing should be anticipated unless an appropriate order is passed by court concerned.

17. The decision in Joginder Kumar (supra) in similar circumstances has been referred and followed subsequently also in K.K. Jerath Vs. Union Territory, Chandigarh and Others, AIR 1998 SC 1934 : (1998) CriLJ 2555 : (1998) 2 JT 658 : (1998) 2 SCALE 471 : (1998) 4 SCC 80 : (1998) AIRSCW 1769 : (1998) 8 Supreme 553 : (1998) 3 Supreme 318 which was a case of anticipatory bail under Section 438 Cr.P.C. apprehending arrest during a C.B.I. inquiry. It was attempted to argue that there is presumption of innocence in favour of each individual until charge against him is established and, therefore, it would not be consistent with philosophy of Constitution that such a person should be subjected to interrogation by application of psychological or ambient pressures much less physical torture. It was stressed that Apex Court has a duty to protect a citizen against such inroads of these fundamental rights. The Apex Court while dismissing petition observed that in considering a petition for grant of bail, necessarily, if public interest requires detention of citizen in custody for purposes of investigation, it would be allowed otherwise there could be hurdles in investigation even resulting in tampering of evidence. In other words the Apex Court did not find any attraction in the arguments for the reason that a bail application has to be considered in the light of already established principle through various judicial precedents and not on mere asking.

18. There are several subsequent cases also wherein the Apex Court has distinguished the cases where there was no allegation of misuse of power of arrest by police authorities and an incumbent was arrested having been found prima facie guilty of commission of a cognizable offence.

19. In respect to circumstances where a bail application has to be considered by courts, the relevant considerations have been laid down in catena of authorities which are well established and need not to be added hereat. They have to be followed.

20. In Lal Kamendra Pratap Singh (supra) the matter came to be considered before the Court for quashing of a first information report. Here also apprehending arrest due to mere registration of a first information report, the matter was brought before this Court seeking quashing of first information report. The High Court dismissed the application and there against the matter was taken to Apex Court. A complaint was made that during investigation or inquiry, petitioners apprehend their arrest by police authorities in an arbitrary manner. It is in this context the Court reminded police authorities to follow the dictum and direction laid down in Joginder Kumar (supra). When the matter was pending before Supreme Court, the police completed investigation and submitted a charge sheet. The Court then declined to interfere since the charge sheet was submitted and permitted petitioner to approach the court concerned by filing a bail application. The Court approved and reminded a seven Judges decision of this Court in Smt. Amarawati and another (supra) wherein an observation was made that the absence of power of anticipatory bail in State of U.P. would not debar the concerned Court/Magistrate to grant an interim bail if there is any likelihood of delay in disposal of bail application finally.

21. I find that in an earlier case of Som Mittal Vs. Govt. of Karnataka, AIR 2008 SC 1126 : (2008) CriLJ 1610 : (2008) 2 JT 41 : (2008) 2 SCALE 108 : (2008) 3 SCC 753 : (2008) AIRSCW 1003 : (2008) 1 Supreme 598 , which was a matter relating to anticipatory bail, one of the two Judges constituting Bench (Hon"ble M. Katju, J.) has referred to and approved seven Judges decision of this Court in Smt. Amarawati and another (supra) and observed that non availability of any provision relating to anticipatory bail in State of U.P. is causing extraordinary burden on the High Court and a recommendation was made for reviving such a provision.

22. However, in none of the cases above, it has been said by Supreme Court or this Court, at any point of time, that once a charge sheet is submitted, still an accused is entitled to be released on bail, on just asking, and the courts below/concerned Magistrate should not apply its mind to the relevant facts and circumstances which would justify whether the concerned person should be granted bail or should be detained in judicial custody. The decision in Smt. Amarawati and another (supra) says otherwise. That being so, expecting this Court to simply stay arrest while directing or permitting the person concerned to approach the court below by filing a bail application and without applying its mind to the relevant facts and circumstances in which bail can be granted, would clearly amount to travesty of justice. It would be an order not in accordance with law and without considering the relevant facts and circumstances. Such an order would clearly travel in the realm of non-application of mind. I am afraid, this Court cannot pass such an order particularly when it is declining to entertain an application under Section 482 Cr.P.C. being satisfied that a prima facie case of commission of cognizable offence has been found against accused resulting in filing of a charge sheet and now the matter must be examined by concerned Magistrate/court regarding bail etc. after considering the relevant facts and

circumstances.

23. I may refer here one more aspect. The manner in which the applicants-accused pray that their arrest should be stayed, at the best can be placed at par with anticipatory or interim bail. In fact while granting an order of stay of arrest the court surpasses even those considerations which it is bound to take into account, when pass an order granting anticipatory bail.

24. Now it is well settled that even an order of anticipatory bail cannot be passed on mere asking but has to satisfy consideration of various relevant aspects in this regard. Some of these aspects have been considered recently by Apex Court in *Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others*, AIR 2011 SC 312 : (2011) 1 Crimes 109 : (2011) 1 RCR(Criminal) 126 : (2010) 12 SCALE 691 : (2011) 1 SCC 694 : (2011) 1 SCC(Cri) 514 : (2011) AIRSCW 3813 : (2010) AIRSCW 7007 : (2010) 7 Supreme 194 : (2010) 8 Supreme 353 and in paras 122 to 138 the relevant facts and circumstances which must be considered by the Court before passing an order of anticipatory bail have been noticed in detail. Though these observations are not exhaustive but the aforesaid decision clearly lays down a law that even in passing an order on anticipatory bail, a bald, unreasoned and non-speaking order staying arrest or granting bail should not be passed as that would amount to a material illegality and irregularity and failure to exercise jurisdiction validly if relevant circumstances before passing such orders are not taken into account, weighed and assessed, and thereafter a decision is taken whether such an order would be justified or not.

25. It is true, that, several orders placed before this court, show that directions as requested by accused applicants to be issued to the court below, have been issued and in some of the cases arrest has also been stayed but unfortunately I do not find that the relevant law has been cited, considered and discussed before such directions. The ultimate direction or action of Court do not constitute a binding precedent. What is binding precedent is the ratio, i.e., the law laid down by Court. A law is laid down when an issue is raised, argued and decided. In none of the orders placed before this Court, I find that any issue, whether these directions, as sought for, should be or can be issued or are justified to be issued, considered and decided. These orders, therefore, do not constitute a precedent so as to have a binding effect under the law of precedent.

26. Lastly it is contended that atleast the court below be directed to consider the bail application of accused applicants on the same day when it is presented. It is pointed out that in many of the cases the concerned courts/Magistrates either grant interim bail or sent accused in jail by deferring any order on the bail application due to paucity of time and that is how the fundamental right of life and liberty of accused is jeopardised for no fault on their part.

27. What is said, if correct, is admittedly something serious and puts a blot on the system of administration of justice. If a person who otherwise does not deserve bail for one or the other reasons is allowed interim bail, only for the

reason that concerned Magistrate/court finds no time to apply mind on his application, it would not only be travesty of justice but would be highly dangerous for the society at large. Similarly, if a person is sent to jail, curtailing his liberty, only for the reason that concerned Magistrate/court could not find time to apply mind on his bail application, again this would be a case of grave injustice, besides violation of fundamental rights of a citizen. Both the situations cannot be appreciated. In the circumstances, I would like to hold that if a bail application is moved in time, with due notice to other side, if so required in law, the Magistrate/court concerned must consider the relevant facts and circumstances before passing any order either way and in case the number of applications are such so as not to make it possible to be attended within the court timing, the District Judge concerned shall look into and distribute the work in such manner so that applications are attended by competent courts without any undue delay and no person is sent to jail or released, by way of interim bail, without application of mind by concerned court/Magistrate. If necessary the Court may attend such applications irrespective of the fact that court timing is over. Upholding Constitutional rights and people's freedom vis-a-vis the safety, protection and interest of society is of prime importance and it cannot be compromised in the name of court timings or something for which the parties are not responsible and accountable. If necessary, on this aspect the matter may also be examined on administrative side by this Court after having relevant information with detail facts and datas from concerned district judgeship(s).

28. Learned counsel for the applicants then placed before this Court a judgment dated 03.07.2014 passed in Application under Section 482 No. 21679 of 2014, Munawwar and nine others Vs. State of U.P. and another and claimed that therein this Court has passed an order for taking up the bail application on the same day and the same should be followed by this Court also on the principle of parity. He also placed another order dated 25.09.2014 passed in Application under Section 482 No. 42289 of 2014, Ram Kesh Rao Vs. State of U.P. to press his submission.

29. The order in Ram Kesh Rao (supra), reads as under:

"Heard learned counsel for the applicant and learned A.G.A. for the State.

The applicant, through the present application under section 482 Cr.P.C. has invoked the inherent jurisdiction of this Court with a prayer that his bail application in complaint case No. 490 of 2014 under Section 406 IPC police station Dharamsinghwa district Sant Kabir Nagar be ordered to be considered expeditiously, if possible on the same day by the court below.

In view of the order passed in Application U/S. 482 No. 21679 of 2014 dated 03.7.2014, no further direction is required to be passed in the present application.

Accordingly, present application is disposed of."

30. It is thus evident that nothing has been said in Ram Kesh Rao (supra) which may constitute any binding precedent on this Court. This order has been passed in the light of this Court's order dated 03.07.2014 passed in Munawwar (supra). I have carefully gone through the aforesaid judgment wherein this Court has taken the view that personal liberty of the subject is of utmost importance and, therefore, whenever a matter is brought to this Court to show that there is any violation of fundamental rights under Article 21 of the Constitution, this Court will protect the person from such violation being the guardian of fundamental rights.

31. The proposition in general is unexceptional. It is the actual application of proposition of law in individual case, whether it applies or not. In order to apply aforesaid dictum there has to be a factual foundation laid down in a case demonstrating that fundamental right of life and liberty under Article 21 of the applicants are being infringed by the police or anyone else. For that purpose specific pleadings are needed. In the present case there is no such pleading that applicants have illegally been arrested or that their fundamental rights under Article 21 have been violated due to their illegal arrest and yet their bail application has not been heard by the court below expeditiously or in the manner as already directed by this Court in various authorities, some of which have already been referred hereinabove.

32. The applicants have yet to surrender. They have yet to move an application before concerned court. Therefore, to issue a direction for something which is yet to see light of the day, is nothing but requiring this Court to pass an order in anticipation of certain facts which are not pleaded or placed before this Court by means of pleading in application concerned. In other words the applicants are seeking relief on imaginary basis. Unless a case is made out for violation of fundamental right under Article 21 of the Constitution by specifically pleading all relevant facts, in my view, no such direction would be justified to issue as it amounts to issuing futile direction by this Court and that too on superfluous and imaginary basis. The aforesaid decisions, therefore, as cited at the bar in support of submission by learned counsel for the applicants, do not help him in any manner.

33. In the result, I do not find myself satisfied to accede to the request made by learned counsel for accused applicants. The application is accordingly dismissed.