
(2001) 03 UK CK 0018

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Writ Petition No. 4 of 2000

B.M. Das and Others

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision : 03-03-2001

Acts Referred:

Penal Code, 1860 (IPC) — Section 307, 323, 504, 506

Citation : (2002) 1 UC 481

Hon'ble Judges : A.A. Desai, C.J.; M.C. Jain, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.C. Jain, J.—In each of the present four writ petitions identical prayer has been made for the quashing of the first information report. As they raise common question of law, they are being decided by this common judgment.

2. In writ petition No. 4 of 2000, there are three Petitioners, who have prayed for the quashing of the F.I.R. dated 21.9.2000 lodged by the Respondent No. 3 Laxmi Prasad Dimri u/s 504/506, I.P.C. stating that he had been receiving threats to his life with abuses on telephone by unknown persons. It was causing mental agony and tension to him and he had apprehension of being harmed in translation of such threats. Though they have not been named in the F.I.R., but subsequently the first informant gave out their names by way of affidavit to the Station Officer of the Police Station, Rudraprayag.

3. There are two Petitioners in writ petition No. 10 of 2000, who have come up for quashing of an F.I.R. in case crime No. 429 of 2000 under Sections 307, 506, 147, 148 and 149 I.P.C. lodged at Police Station, Dalanwala, District Dehradun, inter alia, against them by one Arjun Prakash. The accusation against them by the informant in the F.I.R. is that on 24.10.2000 at about 11.45 p.m. four persons including the present Petitioners over took him on two scooters. Two companions of the Petitioners hurled abuses and opened fire. As a result,

informant's companion Bhagat sustained injury in his head and all the four accused ran away. According to the Petitioners they have been falsely implicated in collusion with one Manish Billa.

4. In writ petition No. 12 of 2000, the Petitioners are five in number, namely, Gyan Giri and his four sons, namely, Ramesh Giri, Naresh Giri, Mahesh Giri and Dinesh Giri. They have prayed for the quashing of the F.I.R. dated 4.10.2000 registered as case crime No. 148 of 2000 under Sections 147, 148, 323, 504, 506, I.P.C, Police Station Ranipur, District Haridwar against them by Respondent No. 4, in which it has been alleged that they assaulted him (informant), his father Jaswant, uncle and nephews.

5. In writ petition No. 13 of 2000, the Petitioners are five in number, namely, Sanjiv Kumar, Jai Singh, Smt. Krishna Devi, Smt. Suman and Rajendra Singh against whom F.I.R. has been made by Respondent No. 4 Smt. Rajni, who is the wife of the Petitioner No. 1, Sanjiv Kumar. The F.I.R. is dated 6.11.2000 under Sections 498A and 506, I.P.C. and u/s 3/4 of the Dowry Prohibition Act regarding cruelty over the demand of dowry with threats.

6. We have heard the Learned Counsel representing the parties at length and the learned Government Advocate from the side of the State. Broadly speaking, the main and only thrust from the side of the Petitioners is that the F.I. Rs. in question have been made with malafide intention and the allegations made therein are wrong or incorrect. From their side, reliance has been placed on a number of rulings. Reference has been made to the case of State of West Bengal and Ors. v. Swapan Kumar Guha and Ors. A.I.R. 1982 S.C. 949 wherein it has been held that the condition precedent to the commencement of investigation u/s 157 of the Code is that the F.I.R. must disclose, prima facie, that a cognizable offence has been committed. If the offence is disclosed, the High Court under Article 226 of the constitution of India will not interfere with an investigation into the case and will permit investigation into the alleged offence. If, the materials do not disclose the offence, no investigation should be permitted since it would be the abuse of process of law.

7. Reliance has also been placed on the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, , in which the principle is reiterated and norms have been laid down where extra ordinary power under Article 226 of the Constitution as well as inherent powers u/s 482, Code of Criminal Procedure can be exercised by the Court either to prevent abuse of process of any court or otherwise to secure ends of justice, they are as under:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence justifying an investigation by police officer u/s 156(1) of the Code except under an order of a

Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused. ?

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the code or the concerned Act, pro-viding efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

8. Much stress has been laid on the kinds of cases mentioned at serial Nos. 5 and 7 above to urge the point that the F.I. Rs. in question deserve to be quashed. We shall deal with this part of the argument in requisite detail a little later.

9. Another case cited for the Petitioners is Pepsi Food Limited v. Special Judicial Magistrate (1988)5 SCC 749, wherein it has been reiterated that it is settled that High Court can exercise its powers of judicial review in criminal matters. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. In that case the allegation in the complaint was that the complainant was sold a bottle of beverage under the brand "Lehar Pepsi" which was adulterated. There were two Appellants before the Supreme court. The first Appellant was Pepsi Food Ltd. and the second Appellant was the Managing Director of the First Appellant. The allegation of the complainant was that he had learnt that manufacturer of the bottle was Pepsi Food Ltd., New Delhi. The allegation in the complaint merely showed that the Appellants had given their brand name to Residency Foods and leverages Ltd. for bottling the "beverage Lehar pepsi. But, the complaint did not show as" to what was the role of the Appellants in the manufacture of the beverage which was said to be adulterated. The only allegation was that the Appellants were the manufacturer of the bottle. There was no averment as to how the complainant could say so and also if the Appellants manufactured the alleged bottle or its contents. His sole

information was from one A.K. Jain, who was impleaded as accused No. 3. Primary evidence on which the Magistrate relied in issuing summons to the Appellants also did not show as to how it could be said that the Appellants were manufacturers of either the bottle or the beverage or both. There was another aspect of the matter. The Central Government in exercise of its powers u/s 3 of the Essential Commodities Act made the Fruit Produce Order, 1955. It was not disputed that the beverage in question was a "Fruit Product" within the meaning of Clause (2) (b) of the Fruit order and that for the manufacture thereof certain licence was needed. The fruit order defines the manufacturer and also sets out as to what the manufacturer is required to do in regard to packing, marking and labelling of the containers of the fruit products. There was nothing on record to show that the Appellants had the licence J for the manufacture of the offending beverage and whether the first Appellant was the manufacturer of the same. It was on these facts and circumstances that the apex court allowed the appeal and set aside the order of the High Court while quashing the complaint and the proceedings against the Appellants. The Supreme Court observed that the allegations made in the complaint, even if taken at their face value and accepted in their entirety, did not prima facie constitute an offence against them. Having regard to the accusations against the Petitioners in the four F.I. Rs. Pepsi Food's case does not render any help to them.

10. The Petitioners have relied upon the case of Joginder Kumar v. State of U.P. and Ors. 1994 S.C.C. (Cri.) 1172 wherein it has been ruled that arrest of a person by police should not be merely on suspicion about his complicity in the crime. The police officer must be satisfied about the necessity and justification of such arrest on the basis of some investigation. Reasons for arrest must be recorded by police officer in his diary. Arrest should normally be avoided except in cases of heinous crime.

11. Having referred to the case law cited at the bar. It would now be appropriate to proceed further to decide the claim of the Petitioners. There can be no quarrel with the legal position emerging from the case of state of West Bengal and Ors. v. Swapan Kumar Guha and that of Pepsi Foods case referred to above that it is a condition precedent to the commencement of the investigation by the police that the F.I.R. must ! prima facie disclose the commission of cognizable offence. There is no manner of doubt that power of the High Court to issue prerogative writs under article 226 of the constitution is plenary in nature. This power can be exercised by High Court to prevent abuse of process or to further the cause of justice. Ordinarily, the criminal proceedings which are instituted against the accused must be tried and taken to logical conclusion under the code of Criminal Procedure and High Court would be reluctant to interfere with the proceedings at an interlocutory stage.

12. As stated earlier, it has painstakingly been argued for the Petitioners that the F.I. Rs. in question deserve to be quashed having regard to the categorisation given at serial Nos. 5 and 7 in Bhajan Lai's case referred to (supra). Having

regard to the allegations made against the accused persons in the F.I. Rs. of the four cases at hand. It can not be said without stretching imagination beyond permissible limits that the allegations are so absurd and inherently improbable on the basis of which no prudent person can ever reach a conclusion that there was sufficient ground for proceeding against the accused persons.

13. To be covered under the category of cases at serial No. 7 of Bhajan Lai's case, it must be manifestly clear that the criminal proceedings are initiated with mala fides or are maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite, him due to private and personal grudge. None of the four cases at hand can be covered under such category. To state this other way, there is no material to demonstrate that any of the F.I. Rs. in question has been initiated with mala fides. Each of them discloses the commission of cognizable offence and none of the grounds stated in the cases referred to by the Petitioners calls for interference by this Court in exercise of extra ordinary prerogative writ jurisdiction under Article 226 of the constitution to quash the F.I.R.

14. We are of the view that the quashing of the F.I.R. can not be sought on the premise that the allegations made are incorrect or wrong according to Petitioners. The Petitioners can not invoke jurisdiction of this Court to enter into their defence. The main attempt of the Petitioners is to hold trial as to the veracity of the accusations made in the Rs. in these petitions. The extraordinary jurisdiction of Article 226 of the constitution can not be exercised for this purpose. It goes without saying that the High Court does not ordinarily enter into the factual controversy in writ jurisdiction. When the F.I.R. discloses commission of cognizable offence (s) and there is a ground for interference by the High Court to prevent, the abuse of the process of any court or otherwise to secure the ends of justice, ordinary system of law must take its own course.

15. In the result, having regard to the allegations made in the four F.I. Rs in question, we are not inclined to exercise our extra ordinary jurisdiction to quash the F.I. Rs. The writ petitions are dismissed.