
(1991) 11 AHC CK 0001

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 8733 of 1991

Devendra Gupta and Others

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 16-11-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482
Electricity Act, 1910 — Section 39

Citation : (1991) 15 ACR 769

Hon'ble Judges : Palok Basu, J

Bench : Single Bench

Advocate : Tej Pal, for the Appellant;

Judgement

Palok Basu, J.—This is an application u/s 482 Code of Criminal Procedure by Devendra Gupta and two others praying that a first information report giving rise to case crime No. 2 of 1989 P.S. Makhanpur u/s 39 of the Indian Electricity Act be quashed. On 27-8-1991 when this petition was filed a counter affidavit was called from the Government Advocate and further proceedings in the said crime No. 2 of 1989 were stayed till 31-12-1991. No counter affidavit has been filed. Hence the matter was heard for admission.

2. Sri Tejpal, learned Counsel for the applicants wanted to take the court through the merits of the allegations contained in the first information report but the fact remains that an FIR has been lodged u/s 39 of the Electricity Act against the applicants which is under investigation. Can and should such an FIR be quashed has again been sought to be argued by Sri Tejpal. This matter is finally concluded so far as this Court is concerned by the Full Bench decision of Seven Judges in R.L. Yadav's case reported in 1989 ACC 181. Sri Tejpal drew the attention of this Court to a few later decisions of the Supreme Court and on the strength of those decisions it was sought to be canvassed that the said decision in R.L. Yadav's case is no more a good law. The two decisions cited by Sri Tejpal are hereafter

discussed:

(1) State of Haryana and others Vs. Ch. Bhajan Lal and others, . In this case the Punjab and Haryana High Court has quashed a first information report and that judgment has been set aside by the Supreme Court with the following observations:

Hence we are constrained to express our disapproval since the context, tenor and tone of the above observations leave us with the feeling that such misplaced sympathy indicated therein appears to have considerably weighed with the learned Judges in taking the extreme step in quashing the first information report. We do not like to make any more comment except saying that as we have pointed out in our exordial note where the "Rule of Law" reigns no one-however highly placed he may be can claim immunity, and much less absolute immunity from the law, but he is always under the law.

In coming to the aforesaid conclusion the Supreme Court has laid down criteria where a first information report may be quashed. The very first criteria is (to quote the Supreme Court's words):

Where allegations made in the first information report or the complaint, even 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.

In view of the aforesaid ruling of the Supreme Court the argument of Sri Tejpal is wholly unfounded.

(2) State of Punjab Vs. Kailash Nath, . The facts in this case were that a first information report was lodged against the Respondent Kailash Nath who challenged it by a petition u/s 482 Code of Criminal Procedure before the Punjab High Court which was allowed. On appeal the Supreme Court did not disturb that judgment against him the ground that enormous delay had taken place between the date of the incident and the commencement of the trial, if any, and, therefore, as against Kailash Nath there was no need to upset the judgment of the Punjab High Court quashing the FIR. There is neither any observation in the judgment nor any discussion by the Supreme Court as to whether either on facts or in law the quashing of the FIR was justified by the Punjab High Court. Consequently this ruling is also distinguishable and does not support the argument advanced by Sri Tejpal. In view of the aforesaid discussion both the Supreme Court decisions are besides the point.

3. It was then argued that a learned Single Judge has made a reference to the Chief Justice for constituting still larger Bench for re-considering R.L. Yadav's case. The said referring order is reported in 1991 ACC 399. Suffice it to say that this Court will prefer to go by the view of the Seven Judges than the Single Judge's.

4. In view of the aforesaid discussion the petition u/s 482 Code of Criminal Procedure is not maintainable. The remedy of the Petitioner/applicant, if any, is

always available in a fit case under Article 226 of the Constitution as laid down in R.L. Yadav's case.

(22) 5. This application consequently fails and is dismissed summarily. Interim order dated 27-8-1991 is vacated.