

(2006) 09 AHC CK 0283
In the Allahabad High Court

Dr. Mohd. Sharif

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 11-09-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Penal Code, 1860 (IPC) — Section 120B, 294, 307, 506, 509

Citation : (2006) 09 AHC CK 0283

Hon'ble Judges : Imtiyaz Murtaza, J; Amar Saran, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Imtiyaz Murtaza and Amar Saran, JJ.—Heard Shri Gopal Chaturvedi, learned Senior Advocate and Shri N.I. Jafri for the petitioner and Shri Irfan Chaudhary and Shri C. Chatterjee for the complainant and learned Additional Government Advocate.

2. The allegations in this case were that the petitioner Dr. Mohd. Sharif, is a Reader in the Sanskrit Department of Aligarh Muslim University had sought to proposition the informant-respondent No. 3, Miss Asma Javed, who was a student of Aligarh Muslim University, on 2.3.2006 in an immoral manner causing mental harassment to her after calling her to his room. After Asma complained to the University authorities, she was pressurized to withdraw her complaint and on 23.3.2006 at about 7.00 or 7.30 in the evening the petitioner sent some unknown persons, who sought to compel her to take her complaint back, they even fired at her. She lodged a complaint about this incident with the Proctor of Aligarh Muslim University on 23.3.2006 and when no action was taken on her complaint to the Proctor nor was it forwarded to the police station concerned, she lodged an FIR on 29.8.2006 annexing therewith her complaint to the Proctor dated 23.3.2006, which was registered at case crime No. 375 of 2006, under Sections 294/506/307/509/120-B IPC, police station Civil Lines, district Aligarh.

3. It is contended by the learned Counsel for the petitioner that the FIR discloses

no cognizable offence and in any case no offence under Sections 294 and 509 IPC was disclosed on the allegations of the FIR.

4. It cannot be said that no offence whatsoever is disclosed on the reading of the FIR as there was a clear allegation of firing on the informant when she refused to take her complaint back and the said action was said to be the result of a conspiracy hatched by the petitioner and, therefore, the FIR against the petitioner was also u/s 506/307/120-B IPC.

5. It was further argued that no action should be taken against the petitioner as the FIR was lodged very belatedly after six months, even though the incident has taken place on 23.3.2006.

6. As the informant had approached the Proctor of Aligarh Muslim University, she could have been hopeful that her complaint would have been forwarded to the police station concerned, but as it was not done, she may have lodged the FIR on the date mentioned. Moreover, it is well settled that belated lodging of the FIR can give no ground for quashing of the same, although it may be a circumstance for considering the prayer for grant of bail to the accused.

7. We also think that it is not a case where the allegation of immoral proposition has been ascribed to a teacher, who had even sought to terrorize the student concerned to withdraw her complaint, to be a fit case to exercise the discretionary equitable jurisdiction to grant the relief of stay of arrest of the petitioner or for quashing of the FIR.

8. There appears little reason for the informant to make such allegations against the petitioner and the defence of the petitioner that there was a dacoity in his house on 19.10.2005 by a clerk of the Sanskrit Department and that the informant was connected with that dacoity as the clerk's wife belongs to district Balrampur, from where the informant hails, appears prima facie to be an improbable defence at this stage.

9. Recently the Full Bench in *Ajit Singh @ Muraha v. State and Ors.* Cr. Misc. Writ Petition No. 4861 of 2000 decided on 5.7.2006 has reiterated the view taken by the earlier Full Bench in *Satya Pal and Others Vs. State of U.P. and Others*, that there can be no interference with investigation or order staying arrest unless the FIR discloses no cognizable offence or there is any statutory restriction on the power of the police to investigate a case as laid down by the apex Court in various decisions including *State of Haryana and others Vs. Ch. Bhajan Lal and others*, and that the observations and directions in *Joginder Kumar's case, Joginder Kumar Vs. State of U.P. and others*, do not relate to the power of the High Court to stay arrest or to quash an FIR under Article 226 and contain only directions for the police, the breach whereof may call for departmental proceedings or action under contempt. The Full Bench has further held that it is not permissible to utilize the writ jurisdiction under Article 226 of the Constitution in such a manner as to provide anticipatory bail which has been deleted in the State of U.P. and to do indirectly what cannot be done directly.

10. The petitioner's counsel has been unable to satisfy the Court that prima facie on the allegations in the FIR no cognizable offence is disclosed, or that there was any statutory restriction on the conduct of investigation in this case.

11. In this view there is no force in the writ petition, which is accordingly dismissed.

12. However, it is provided that in case the petitioner surrenders or is produced before the court concerned within two weeks from today in the aforesaid case crime and applies for bail, his prayer for bail shall be considered expeditiously in accordance with law.