(2004) 03 AHC CK 0027

In the Allahabad High Court

Case No : Criminal M.W.P. No. 1877 of 2004

Institute of Multi Media and Another — APPELLANT

Vs

State of U.P. and Others — RESPONDENT

Date of Decision : 23-03-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 418, 419, 420

Citation : (2004) 2 ACR 1912

Hon'ble Judges : M.C. Jain, J;K.K. Misra, J

Bench : Division Bench

Advocate : B.B. Paul and A.P. Paul, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

M.C. Jain, J.—The Petitioners have prayed for a writ of certiorari quashing the proceedings of Case Crime No. 76 of 2004 under Sections 418/419/420, I.P.C., P.S. George Town, Allahabad and for a declaration that the F.I.R. of the said crime (Annexure-4 to the writ petition) does not constitute any offence. A mandamus is sought commanding the Respondents not to enforce the proceedings of the said case crime. An ad interim mandamus is also sought staying further proceedings in consequence of the said case crime including the arrest of the Petitioner No. 2.

2. We have heard Sri B. B. Paul, learned Counsel for the Petitioners and learned A.G.A. The F.I.R. Annexure-4 to the writ petition has been lodged by Respondent No. 3, which we have perused.

3. The gist of the F.I.R. is that Respondent No. 3 Shiv Sewak Tripathi and his friend Pramod Kumar Misra visited the newly opened Institute of Multi Media situated near Saket Hospital, Allahabad and were told that the said Institute carries on the business of Alfa milk/Ghee, used for manufacture of medicines to be supplied to multinational company. They were also told by the persons manning the office in the Institute that milk would be purchased @ Rs. 200 per

litre and for every one litre of milk, one had to deposit a sum of Rs. 23,900 for kesar which would last for 33 days, whereafter the persons concerned would be paid price of the milk amounting to Rs. 6,600 @ Rs. 200 per litre. Weekly payment of one litre milk would be made. Attracted by the scheme, Respondent No. 3 and his aforesaid friend each deposit Rs. 23,900 on the first day and continued to make further deposits. Respondent No. 3 deposited Rs. 3 lacs and his friend deposited Rs. 4 lacs. For some of the deposits, receipts were issued but for certain other payments it was assured that receipts would be issued later on. When weekly payment was asked for, it was not made on varied pretensions. Even on completion of the month, no payment was made. Respondent No. 3 and his friend entertained doubt about the genuineness of the scheme floated by the Director of the said Institute, namely, Vinay Chand Kesarwani, Petitioner No. 2. When they inquired from him as to where the medicines were being supplied, nothing was disclosed on the pretext that such details were not to be revealed. Respondent No. 3 again went to the office of the Institute and demanded his money. The Manager of the Institute, its Director-Vinay Chand Kesarwani (Petitioner No. 2) and cashier Shiv Kumar Tripathi were found sitting there. They did not make any payment in spite of his earnest request. Next day Respondent No. 3 again went to the Institute in an attempt to meet the Director--Vinay Chand Kesarwani, Petitioner No. 2 but he was not available and he was informed that he had gone out. He had also switched off his mobile phone. This way, Respondent No. 3 and many others were cheated of lacs of rupees. On the lodging of such F.I.R. on 6.3.2004, a case under Sections 418/419/420, I.P.C. was registered.

4. The submission of the learned Counsel for the Petitioners is that even if prosecution case is believed in its entirety, it does not attract any ingredient of Section 418/419/420, I.P.C. ; that Petitioner No. 2 being the Managing Director is not aware of many activities of the Society at Allahabad and is not liable to be prosecuted ; that the dispute if of civil nature and on this score also the arrest of the Petitioner No. 2 is liable to be stayed and that proceedings against Petitioner No. 2 are an abuse and misuse of process of law. It was further been urged that right to arrest is quite different from actual necessity of arrest and since none of the Petitioners is likely to abscond, their arrest is liable to be stayed. Learned Counsel for the Petitioners has cited the following rulings in support of his submissions:

(1) R.P. Kapur Vs. The State of Punjab,

(2) State of Haryana and others Vs. Ch. Bhajan Lal and others,

(3) Mrs. Sujata v. Manohar 1998 UP Cri 118 ;

(4) Chandrapal Singh and Others Vs. Maharaj Singh and Another,

(5) S. Guin and Others Vs. Grindlays Bank Ltd.,

(6) Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre

and Others,

(7) G. Sagar Suri and Anr. v. State of U. P. and others 2000 (1) SCC 360 ;

(8) Joginder Kumar Vs. State of U.P. and others, ; and

(9) M.C. Abraham and Another, A.K. Dhote and J.F. Salve and Another Vs. State of Maharashtra and Others,

5. On the other hand, the argument of the learned A.G.A. is that the F.I.R. discloses a serious offence of cheating and the Petitioners are not at all entitled for any relief claimed through this petition. According to him, their only attempt is to elude the hands of law after cheating innocent persons of lacs of rupees.

6. We have perused the aforesaid authorities cited by learned Counsel for the Petitioners and we are of the view that they do not help the Petitioners in view of what we relate in succeeding discussion.

7. On careful consideration of the matter, we are of the opinion that the F.I.R., prima facie, discloses the offence of cheating. Petitioner No. 2, so-called Director of the Institute was seemingly the prime architect heading this racket through an attractive scheme to trap innocent citizens and fleece money from them. He lured the gullible persons including Respondent No. 3 in the trap of the scheme, designed with the dishonest intention to cheat and induce a number of persons to deliver money to him (Petitioner No. 2) and his associates. After collecting huge money, he went underground, or, to say, vanished in thin air, not available to Respondent No. 3 and others who deposited their hard earned money with him.

8. It is not at all acceptable that the dispute is of civil nature of accounting or that Petitioner No. 2 being the Director is not liable to be proceeded against. There is a clear recital in the F.I.R. that Respondent No. 3 had met the Respondent No. 3 in the office, who after having collected huge money from the persons including him (Respondent No. 3) had given false and empty assurances, whereafter he became unavailable even switching off his mobile phone. Prima facie, the grand attractive scheme floated by Petitioner No. 2 was a fraudulent catcher for simpleton and innocent citizens incapable of seeing through his game. This is what comes to surface at this stage on going through the F.I.R. We would refrain from saying anything more to save expression of opinion on ultimate merits.

9. In view of the above discussions, the writ petition is dismissed.

10. We also direct the office to send a copy of this order to the Senior Superintendent of Police, Allahabad, within four days, who shall ensure that the law takes its straight course in consequence of the F.I.R. of Case Crime No. 76 of 2004 u/s 418/419/420, I.P.C., P. S. George Town, Allahabad, prima facie, disclosing a serious cognizable offence of cheating innocent citizens of lacs of rupees through a fraudulent scheme floated by the Petitioner No. 2 and his

associates in this city of Allahabad.