
(2003) 05 AHC CK 0290
In the Allahabad High Court
Case No : Criminal M.W.P. No. 1199 of 2003

Ishtiyag and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-05-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 342, 394, 408, 506

Citation : (2003) 2 ACR 1965

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

Bench : Division Bench

Advocate : S.U. Khan, for the Appellant; A.G.A., for the Respondent

Judgement

M.C. Jain, J.—Petitioner No. 1 is a Sub-Inspector of Police and Petitioner No. 2 claims to be a businessman. They have prayed for quashing of the first information report dated 5.1.2003 registered at P.S. Kotwali Civil Lines, Allahabad as Crime No. 10 of 2003 u/s 342/394/323/506/408, I.P.C. and/ or for stay of their arrest in the said crime as also for transferring the investigation to C.B.C.I.D. or to P.S. G.R.P., Lucknow.

2. We have heard Sri S. U. Khan learned Counsel for Petitioners and learned A.G.A. Counter-affidavit from the side of the State and rejoinder-affidavit from the side of the Petitioners have also been exchanged. The F.I.R. in question Annexure-1 to the writ petition has been perused by us.

3. The F.I.R. in question has been lodged against the Petitioners by Respondent No. 3 Raj Kumar who is the Director of M/s. Raj Forex Pvt. Ltd., with its registered office at E-1/60, Sector-7 Rohini, New Delhi. The said company is engaged in the business of currency exchange under a valid licence issued by the Reserve Bank of India. The facts are that on 23rd December, 2002, Ashok Kumar, an employee of Respondent No. 3 had boarded Amrapali Train from Delhi for Gorakhpur with 33,500 American Dollars valued at Rs. 15,72,000 in Indian currency. He was detained by the Petitioners at Lucknow railway station on the

pretext that he was carrying illicit currency. He was forcibly made to be seated in a Tata Sumo vehicle and brought by them to Allahabad. He was confined in a house at Allahabad and the said 33,500 U.S. Dollars were robbed from him after giving beating. He was also made to sign and thumb mark certain blank papers. Ultimately, a ticket from Allahabad to Delhi was purchased for him by the Petitioners and he was made to board the train. He was also threatened of his life and warned not to disclose the incident to anybody. On reaching Delhi, he disclosed the incident to his employer who sent him back to Allahabad with certain persons. Here he (the employee Ashok Kumar) identified the premises in which he had been confined and robbed of the currency. The Petitioners were found. Petitioner No. 1 (Sub-Inspector of Police) offered threats to Respondent No. 3 also on phone from Allahabad that he would be arrested and implicated in false cases. Respondent No. 3, however, insisted that he would lodge an F.I.R. The Petitioners then offered to strike a compromise, but to no effect. He then ultimately lodged the F.I.R.

4. The submission of the learned Counsel for the Petitioners is that Petitioner No. 1 was actually posted at Rae Bareilly and was on duty and as such there was no occasion for his participating in the said crime. The Petitioner No. 2 is a businessman belonging to a reputed family. Ashok Kumar, the servant of Respondent No. 3 himself grabbed the money and cheated his master. The F.I.R. is delayed also besides being false.

5. It is noted from the counter-affidavit filed by Vijay Kumar Mishra, Investigating Officer of the case that evidence has come to be collected during investigation against the Petitioners. In his statement made to the Investigating Officer, Respondent No. 3 has supported the version given by him in the F.I.R. The Petitioners have come to figure in the statement of Ashok Kumar (servant of Respondent No. 3) who was carrying the currency and was allegedly robbed of the same by the Petitioners in the manner stated above, though he is also a co-accused. Not only this, on 7.1.2003 while the Investigating Officer was in search of the Petitioners he found some blank papers with thumb impressions of Ashok Kumar from the pocket of the coat belonging to Petitioner No. 1 from his room in the presence of the witnesses. He has also recorded the statement of Durga Prasad, the driver of the vehicle Tata Sumo No. M.H. 04/AA-2821 on 23rd January, 2003, who has given the details about the incident. The complicity of the Petitioners in this serious crime is prima facie, apparent from the evidence collected during the course of investigation. The Petitioners are involved in a crime of very serious nature. So far as Petitioner No. 1 (Police Sub-Inspector) is concerned, the allegations are as if the fence has started eating the crop, the protector of law turning to be law-breaker and desperado. There is no ground either to quash the F.I.R. or to stay the arrest of the Petitioners in this serious crime. The Petitioners are named in the F.I.R. Neither the informant-Respondent No. 3 nor his servant Ashok Kumar from whom the currency was allegedly robbed, is prima facie shown to have any enmity with any of them. The informant could not dare to falsely implicate the Petitioners, one of whom is a

Police Sub-Inspector.

6. So called delay in the lodging of the F.I.R. would be germane to be explained at the trial. It may be stated here as passing reference that there was nothing unusual if Respondent No. 3 first concentrated to recover his money, if possible, and lodged the F.I.R. when his efforts did not yield any fruitful result.

7. There can be no question of transfer of the investigation either. Normally, the investigation should be done by the local police. The Supreme Court has ruled in the case of Central Bureau of Investigation and another Vs. Rajesh Gandhi and another, , that the decision to investigate or the decision on the agency which should investigate does not attract the principles of natural justice. The accused cannot have a say in who should investigate the offence he is charged with.

8. We are of the clear view that interference in exercise of extra-ordinary discretionary writ jurisdiction in the present case would send a wrong signal in the society that the law does not universally apply to all persons alike who are accused or involved in criminal offences, irrespective of their post, position or status in life. The Petitioners have to be relegated to the ordinary course of law.

9. We see no merit in this writ petition and it is hereby dismissed. Stay order dated 6.3.2003 is vacated. The Investigating Officer is free to arrest the Petitioners and proceed in the matter in accordance with law.

Let a copy of this order be supplied to Sri A. K. Dwivedi, learned A.G.A. by tomorrow for being communicated to the Investigating Officer concerned for needful action as per the provisions of law.