
(1990) 11 AHC CK 0042

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 28041 of 1990

Jagdish Prasad and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 29-11-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 161, 169, 482
Penal Code, 1860 (IPC) — Section 380, 457
Prize Chits and Money Circulation Schemes Banning Act, 1978 — Section 3

Citation : (1990) 1 AWC 384 : (1991) CriLJ 1624

Hon'ble Judges : K.P. Singh, J; Giridhar Malaviya, J

Bench : Division Bench

Advocate : V.P. Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

Giridhar Malaviya, J.—Jagdish Prasad and seven others have filed this petition with the prayer to quash the First Information report dated 22-9-90 giving rise to crime No. 435 of 1990 Under Sections 457 and 380, IPC Police Station Shahganj, District Agra. An application has been simultaneously made seeking stay of the arrest of the applicants in the said crime.

2. The allegation in the FIR lodged by one Smt. Chameli Devi on 22-9-90 was that on the night between 16/ 17th April, 1990 her relations had stolen Rs. 36000/-, two pairs of silver Payal weighing 18 Tola and a golden ring weighing 1 Tole after breaking open the lock of her box. It was mentioned in the FIR that the details of this incident had been mentioned in a report given by her in the office of the Dy. S. P. Agra on 27-7-90 requesting the police to get the case registered and to take necessary action. Consequently the informant, while annexing the copy of the said report dated 27-7-90 had requested the police to take necessary action in the matter. This report is Annexure-2 to the writ petition.

3. In the petition the petitioners have given the pedigree, according to which the

first informant Smt. Chameli Devi was aunt (Bua) of the father of the petitioner No. 4 Dharmendra Nath. The rest of the petitioners are admittedly the relations of Dharmendra Nath. It is not disputed that Smt. Chameli Devi had come and stayed with Smt. Jai Devi at 10-/ 131-A Koli hai, P. S. Shahganj, District Agra when she complained about the loss of her ornaments and cash etc. Admittedly the petitioners Nos. 1 to 6 are living in one and the same house i.e. house No. 10-131-A, Koli hai, P. S. Shahganj, District Agra. It is further asserted in the petition that on her complaint some persons intervened in the matter. Thereafter it was agreed that the family members of the petitioners would pay the compensation of Rs. 20,000/- to Smt. Chameli Devi. Consequently it is alleged that a Panchnama was prepared on 16-5-90 evidencing the compromise. This compromise (Panchnama) which was entered in between Smt. Chameli Devi and Ravendra Nath alias Teepu son of Gangeshwar Nath Saxena, second party in the Panchnama, who was the brother of Dharmendra Nath, petitioner No. 4, is Annexure-1 to the writ petition. A perusal of this Panchnama clearly mentioned that the second party on 16-4-90 had taken away Rs. 36000/-, two pairs of silver Payal and a golden ring and as the second party had paid back Rs. 12,000/- and had agreed to pay Rs. 8,000/- within a year, hence no action would be taken by either party in respect of the said incident in future and even if some action was taken, the same would be treated to be illegal.

4. It appears that when the case was registered on the basis of the FIR, Annexure-2, the police investigated the matter, interrogated the first informant and on the basis of the statement of the first informant in which she alleged that although she had not seen any person taking away her belongings, yet she suspected that Dharmendra Nath, Ravendra Nath, Tapeswar Nath etc. had conspired and robbed of her belongings, the police wanted to apprehend the petitioners. In this back ground the petitioners have come to this court with the prayer for quashing of the First information report against the petitioners.

5. The learned counsel for the petitioners has contended that since the compromise itself clearly mentions that only Ravindra Nath had taken the belongings of the first informant, hence the first information report should be quashed as against the present petitioners, inasmuch as neither the first information report nor the compromise (Panchnama) made out any case against the rest of the petitioners.

6. We have heard the learned counsel for the petitioners as also the learned Additional Govt. Advocate on this issue at the stage of admission of this petition itself.

7. The learned Addl, Govt. Advocate relied upon a seven Judges Full Bench judgment of this Court in the case of Ram Lal Yadav and Others Vs. State of U.P. and Others, . According to the learned Additional Govt. Advocate if the reading of the first information report discloses an offence, the Court cannot interfere in the statutory right of the police to investigate into the said crime.

8. However, learned counsel for the petitioners contends that the aforesaid Full Bench judgment in the case of Ram Lal Yadav was considering the question whether the High Court had inherent powers u/s 482, Cr. P.C. to interfere with the investigation by the police or not and whether the High Court in its inherent powers could stay the arrest of the accused during investigation. Learned counsel for the petitioners further contends that in any case the said Full Bench had categorically mentioned that if the power of investigation is exercised by a police officer mala fide, the High Court can quash the investigation under Article 226 of the Constitution. Learned counsel for the petitioners has further contended that the Supreme Court in the case of State of West Bengal and Others Vs. Swapan Kumar Guha and Others, had categorically observed in para 64 of the judgment that a person against whom no offence is disclosed, cannot be put to any harassment by the process of investigation which is likely to put his personal liberty and also property which are considered sacred and sacrosanct into peril and jeopardy.

9. According to the learned counsel for the petitioners the compromise (panchnama) was the positive proof that the petitioners were not responsible for the crime of theft and as such in view of the aforesaid observations of Supreme Court in the case of State of West Bengal and Others Vs. Swapan Kumar Guha and Others, the first information report against the petitioners as also the investigation which was being conducted in the said case against the petitioner deserved to be quashed.

10. The question which, therefore, has to be considered is whether in such cases where the first information report disclosed the commission of an offence, is it permissible that a Court may interfere in the statutory right of the police to investigate the said crime. The next question would be whether the court should, at that stage, look into the evidence which a part wants the Court to examine in its defence, and to come to a conclusion whether or not the said person is involved in the said crime or not.

11. By a series of the judgments by the privy council and the Supreme Court, it is not absolutely settled that the Courts do not interfere in the statutory right of the police to investigate the matter where the first information report discloses the commission of a cognizable offence. It is not necessary to quote all these cases in this judgment. However, as the learned counsel has placed reliance on the case of State of West Bengal v. Swapan Kumar Guha (supra), it appears desirable to look into that case to answer the question which has been raised before us in the present petition. In the case of Swapan Kumar Guha the Firm Sanchaita Investments and others represented by its three Directors was alleged to have contravened the provisions of Section 3 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. The First and its two partners had filed a writ petition in the High Court challenging the validity of the FIR and the proceedings arising out of the same. The High Court allowed the petition and quashed the first information report. The said order of the High Court was

challenged in the Supreme Court by the State of West Bengal. Considering the arguments, Hon. A. N. Sen J. in para 64 of the judgment held as follows:

"64. "In my opinion, the legal position is well settled. The legal position appears to be that if an offence is disclosed, the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed; if, however, the materials do not disclose an offence, no investigation should normally be permitted. The observations of the Judicial Committee and the observations of this Court in the various decisions which I have earlier quoted, make this position abundantly clear. The propositions enunciated by the Judicial Committee and this Court in the various decisions which I have earlier noted, are based on sound principles of justice. Once an offence is disclosed, an investigation into the offence must necessarily follow in the interests of justice. If, however, no offence is disclosed, an investigation cannot be permitted, as any investigation, in the absence of any offence being disclosed, will result in unnecessary harassment to a party, whose liberty and property may be put to jeopardy for nothing. The liberty and property of any individual are sacred and sacrosanct and the Court zealously guards them and protects them. An investigation is carried on for the purpose of gathering necessary materials for establishing and proving an offence which is disclosed. When an offence is disclosed, a proper investigation in the interest of justice becomes necessary to collect materials for establishing the offence, and for bringing the offender to book. In the absence of a proper investigation in a case where an offence is disclosed, the offender may succeed in escaping from the consequences and the offender may go unpunished to the detriment of the cause of justice and the society at large. Justice requires that a person who commits an offence has to be brought to book and must be punished for the same. If the Court interferes with the proper investigation in a case where an offence has been disclosed, the offence will go unpunished to the serious detriment of the welfare of the society and the cause of the justice suffers. It is on the basis of this principle that the Court normally does not interfere with the investigation of a case where an offence has been disclosed. The decisions on which Mr. Chatterjee has relied are based on this sound principle, and in all these cases, an offence had been disclosed. Relying on the well settled and sound principle that the court should not interfere with an investigation into an offence at the stage of investigation and should allow the investigation to be completed, this court had made the observations in the said decisions which I have earlier quoted reiterating and reaffirming the sound principles of justice. The decisions relied on by Mr. Chatterjee, do not lay down, as it cannot possibly be laid down as a broad proposition of law that an investigation must necessarily be permitted to continue and will not be prevented by the Court at the stage of investigation, even if no offence is disclosed. While advertent to this specific question as to whether an investigation can go on even if no offence is disclosed, the Judicial Committee in the case of AIR 1945 18 (Privy Council) and this Court in R.P. Kapur Vs. The State of Punjab, , Jehan Singh Vs. Delhi Administration, , S.N.

Sharma Vs. Bipen Kumar Tiwari and Others, have clearly laid down that no investigation can be permitted and have made the observations which I have earlier quoted and which were relied on by Mr. Sen. As I have earlier observed this proposition is not only based on sound logic but is also based on fundamental principles of justice, as a person against whom no offence is disclosed, cannot be put to any harassment by the process of investigation which is likely to put his personal liberty and also property which are considered sacred and sacrosanct into peril and jeopardy."

12. The learned counsel for the petitioners on the basis of the observations in the said passage underlined by us says that in every matter where a person comes to the High Court and claims that the FIR does not disclose any offence against him, or where he can bring to the notice of the High Court the matter, which may also demonstrate that no offence is made out against him in connection with the said crime, should not be permitted to face the ignominy of investigation in a criminal case against him and in a proper case this court should always look into the matter and quash the first information report against the person approaching the High Court.

According to the learned counsel there may be a person who might have been present at a place so far away at the time of the alleged commission of the offence for which there may be a positive documentary evidence available to disprove any allegation that he had participated in the said crime. The learned counsel contends that if such a person despite a positive evidence of this nature is asked to face the ignominy of investigation by being arrested etc., it is bound to result in unnecessary harassment by the process of investigation, which according to the learned counsel, is so categorically deprecated by the Supreme Court in its judgment quoted above.

13. We are of the view that the learned counsel has not correctly appreciated the observation of the Supreme Court in the case of Swapan Kumar Guha. While it is true that the Supreme Court mentioned the fact that a person against whom no offence is disclosed, could not be put to harassment by the process of investigation, reading the entire judgment as a whole along with other judgments quoted by him earlier, leave no room to doubt that the expression person was used in the said passage to mean that if the first information report itself did not disclose any offence, then any person named or not in the said first information report could not be required to face the investigation.

14. We have to examine this matter from yet another angle. In most of the cases of dacoity no person is named as an accused. If it was to be held that since the offence was not disclosed against any person in the first information report, no person could consequently be challaned or prosecuted. That would lead to a chaos and would be the travesty of justice. Similarly there are cases where a dead body is recovered with evidence of unnatural death with the result that the matter is reported to the police about the crime, and one unnamed first information report is then registered. There are yet other type of cases where a

person after committing the murder himself reports to the police about the commission of the murder by alleging sometime about a dacoity or even by asserting that when he happened to reach the place, he had found the crime completed. In all such cases no person is mentioned as an accused in the FIR. Can it be suggested that in all these cases although crime had taken place, yet since in the first information report the offence was not disclosed against any person, the investigation should not proceed and the guilty person could never be brought to book? The answer has to be that in such offences where a person was nominated in the FIR or not, the matter had to be investigated and the guilty person had to be brought to book, despite the fact that no offence had been disclosed against any person.

15. We are aware of the fact that there is also a tendency prevailing in our country whereby due to enmity or other reasons there are cases in which some persons are falsely nominated, both at the stage of the first information report as also at the stage of investigation. Taking the example cited by the learned counsel for the petitioners in which a person had a perfect alibi in the form of positive documentary evidence at a remote far away place from the place where the crime was committed, we still have to see whether it would be proper for the Court to interfere in such case at the stage of investigation itself and to come to a conclusion, whether or not such person was involved in the crime or not. We have given our anxious consideration to this aspect of the matter and are of the view that even in such cases it is not open for the Court to quash the first information report against such person, or even to stay his arrest in such matters. We give reason of our aforesaid conclusion hereafter:

The scheme of investigation as set out in Chapter XII of the Code of Criminal Procedure, 1973 contemplates the investigation when an information is received regarding the commission of an offence. Section 169 of the Code of Criminal Procedure reads as follows:--

"If, upon an investigation under this Chapter, it appears to the Officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him to his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report and to try the accused Or commit him for trial."

16. This means that the Investigating Officer in such cases arrived at the conclusion that the person against whom the offence was alleged was not involved in the crime and, therefore, should not be tried for the said offence. If upon a plea of alibi, or any other defence plea the Investigating Officer is prevented to investigate a crime which otherwise disclosed an offence, there could be two possibilities. Firstly if the matter is not investigated by the police, it will never be possible for the Investigating Officer to give a clean chit to an innocent person, who may be falsely nominated or involved in a criminal case.

Secondly there may be cases where some person may set up a false alibi. It cannot be the function of this court in its jurisdiction under Article 226 of the Constitution to examine whether the alibi so set up by the person is genuine or not. It is not unknown that there have been cases of conspiracy where the crime motivator got himself landed in jail after committing some petty crime and then got some heinous crime such as a murder, committed through his men. There have been allegations that sometime an accused by bringing the jail authorities came out of the jail to commit a heinous crime and then went back to jail to plead later that he was all along in jail when the crime was committed. Therefore, a plea of alibi, for whatever worth it may be, has to be investigated by the Investigating Officer; and this court would not embark upon any such enquiry in a case where the first information report discloses the commission of a cognizable offence, to find whether some person was actually involved in that case or not. This is the function purely entrusted to the Investigating Officer of Police and the court will not assume the jurisdiction of the Investigating Officer to arrive at a conclusion and to give a finding which normally a police officer is supposed to give in terms of Section 169 of the Code of Criminal Procedure.

17. However, the learned counsel for the petitioners contends that this c of non-inference by the Court is bound to cause serious prejudice to such person where the person may be falsely implicated despite the fact that he was really not involved in the crime and had a real perfect alibi, inasmuch as even in such cases, also, he would be arrested and would have to face an illegal and unjustified prosecution after being arrested in the said case. It is not, that there is no remedy available to such a person. Once a person feels that he is being wrongly implicated in a case, he can always surrender and apply for bail. Except in the State of Uttar Pradesh, in other States such a person has a right even to make an application for anticipatory bail. In either case it is open for such a person apprehending his arrest to tell the Court that on the facts and circumstances disclosed by him in his bail application, he was entitled to bail forthwith. Thus there is a provision for the intervention by a Court during the pendency of the investigation to look into the matter and in a suitable case grant bail to the person whose liberty has been threatened.

18. However, learned counsel for the petitioners contends that this remedy of getting the bail is not the appropriate alternative remedy. In this respect his contention was two fold. The first contention is that if the person had not committed any crime, why should he be even required to go to courts of law and ask for bail. His second contention is that the process of bail these days has become such, that it takes a long time for a person to get his bail application decided, with the result that even in such case where the Court ultimately comes to a conclusion that the applicant was prima facie falsely implicated and should be granted bail, yet he languishes in jail for quite some time. In the first place if the petitioner comes to this Court asserting that no offence is disclosed against him hence he is entitled to a relief, we see no reason why he could not go to the district courts to ask for bail. So far as the question of time in the disposal of the

bail application is concerned, here again we find that even in the High Court it is not possible to grant a relief immediately to a person as soon as he moves the petition. The learned counsel contends that in a suitable case a person can get an interim order from the High Court, staying his arrest during the pendency of the writ petition. Apart from the fact that a Full Bench of this High Court has categorically said that the arrest can be stayed by the High Court only in such cases where the FIR itself does not disclose the commission of any offence, it will be a wrong practice to grant an ex parte stay by the High Court in the cases where the FIR discloses the commission of a serious nature of a cognizable offence. Moreover this court has time and again directed by their order and judgment that the trial court should attach utmost importance in the disposal of the bail application and should, as far as possible, dispose of the bail applications which are moved before them, on the same day. The difficulty arises where the State counsel does not have the relevant materials for opposing the bail application by placing full facts before the Court as it cannot be expected that in every case the prosecuting Officer should be possessed with the entire materials relating to criminal cases available with him. However, in a case of exceptional nature where the applicant can demonstrate to the satisfaction of the Court concerned that he has a prima facie case of his false implication and of undue harassment by producing the documentary evidence to that effect, the Court considering the bail application can direct the release of such person for a couple of days on his executing a personal bond by asking the prosecution to get instructions in the said matter by the time when the court takes up the case again. Therefore, it is not right on the part of the learned counsel for the petitioners to contend that if this court does not interfere in such matters, the innocent person is bound to face undue harassment. Moreover, wherever a system is involved for protection of society to secure, peace and harmony. If sometime some individual has to face a slight discomfiture, in view of the fact that the person concerned has ultimately to approach some courts of law, the system itself cannot be given up.

19. The learned counsel for the petitioners also argued that the view taken by us would not leave any case to be brought to the High Court as every first information report will necessarily disclose some offence. The contention of the learned counsel is not correct. Very often we come across the cases where we find that in view of the amendments notified some particular action which has been considered as an offence had ceased to be an offence on the said date. In such cases notice is always issued by the High Court and the arrest of the petitioner is stayed. Similarly sometime we find some complaints and a perusal of the complaint demonstrates that no offence is disclosed from the facts alleged therein. The High Court interferes. One such case was apparently before the High Court and the Supreme Court in the case of *State of West Bengal v. Swapan Kumar Guha* (supra). Hence the learned counsel for the petitioners is not correct in his assertion that the view which we are taking, is going to render the remedy of non-existent for every purpose and for all the time to come.

20. Coming to the facts of the instant case we find that admittedly the victim had been robbed of her belongings. Hence a non-cognizable offence was disclosed by the first information report. Merely because the first information report was delayed or merely on account of some compromise by which the party had decided not to bring the matter to the notice of the police earlier, would not prevent the police to investigate the matter when once it is brought to its notice. Moreover, the factum of the occurrence is not disputed. Whether the petitioners were a party to the crime or not, cannot be decided by us merely on account of the Panchanama in which only one person was shown to be responsible for the crime. Moreover, admittedly in her statement u/s 161, Cr. P.C. the first informant named some of the petitioners and said that those petitioners and others had joined hands in robbing her of her belongings. Under the circumstances, since the perusal of the FIR discloses the offence, this Court would not be justified in quashing the first information report of this case. In this connection we would also like to add that it is not possible to split any first information report. If the first information report discloses an offence, it has to be investigated. To suggest that a first information report can be quashed against some persons and the investigation would be directed not to be continued against some persons, could be against the settled norms that the police must have free hand to investigate the matter. The only remedy which is available to the persons in this regard is to make an application for bail before the appropriate court, which is found to look into the facts alleged therein and if satisfied, can direct the person to be released on bail. Once a person has been released, he has then to bring the facts proving his innocence to the notice of the I.P. and then wait for his report. It is possible that the I.O. may agree and submit a report u/s 169, Cr. P.C. in favour of such person which in common term is being known as a final report. There may still be cases where a person may not be satisfied with the conclusion of the I.P. In that event after a chargesheet is submitted and the person is summoned, it is again open for that person to contend before the summoning court or the trial court at the stage of framing of the charge, that on the evidence collected by the I.O. he is entitled to discharge. All these safeguards have been carefully set out in the Code of Criminal Procedure and it is not possible for this Court in its jurisdiction under Article 226 of the Constitution to exercise those jurisdictions and to investigate into the questions of fact which can be done only by the courts mentioned herein before.

21. The result is that the petitioners have failed to make out any case for interference by this court. This writ petition is accordingly dismissed at the stage of admission.