
(2015) 07 AHC CK 0184

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. 8495 of 2006

Kamlesh and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 01-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197
Penal Code, 1860 (IPC) — Section 409, 419, 420, 466, 468
Prevention of Corruption Act, 1988 — Section 19

Citation : (2015) 90 ALLCC 796

Hon'ble Judges : Ravindra Singh, J;Raghvendra Kumar, J

Bench : Division Bench

Advocate : Zafar Abbas, for the Appellant

Final Decision : Disposed off

Judgement

Raghvendra Kumar, J—Heard learned Counsel for the petitioners and Sri A.K. Sand, learned Additional Government Advocate for the State. This petition has been filed by the petitioners, Kamlesh and Anees with the prayer to quash the First Information Report dated 25.7.2004 in Case Crime No. 960 of 2004, under sections 419, 420, 466, 468, 471 and 409 IPC, P.S. Kotwali, district Azamgarh.

2. It has been argued that the petitioners are innocent and the case is old one and the petitioners are undergoing the mental trauma of case having been lodged at police station, Kotwali as referred above and they have been falsely implicated.

3. Learned Additional Government Advocate has submitted that it is a case of financial embezzlement and there is illegality in disbursement of the amount of scholarship and the investigation relates to a period from 1997 to 2000. So many documents are to be scrutinized by the Investigating Officer so as to arrive at correct inference by way of investigation. There are no laches on the part of the Investigating Officer and the delay is natural. From the perusal of the order dated 7.12.2006, it explicit that the charge-sheet in the instant case has been

submitted against the petitioners therefore the prayer sought for quashing the impugned FIR dated 25.7.2004 has become infructuous.

4. Instead of disposing of the writ petition, the Bench of this Court collected the information about the different nature of matters pending before different Investigating Agencies and collected different informations through different orders passed from time to time. In the process, the affidavits have been filed by Ms. Sutapa Sanyal, Additional Director General, (E.O.W.), Lucknow, Mr. Bhanu Pratap Singh, Director Vigilance and Mr. H.C. Awasthi, Additional Director. The writ petition is being considered on the basis of latest materials placed before the Court through affidavits.

5. From the perusal of the affidavit filed by Ms. Sutapa Sanyal, Additional Director General, (E.O.W.), Lucknow, containing annexures, which reveal that cases are pending since long at the stage of investigation. In the list of cases referred in annexures some are pending for grant of prosecution sanction or approval of last progress report by the Government. In some matters expert reports are awaited. For these reasons the investigation could not be culminated in police report.

6. Shri Bhanu Pratap Singh, Director Vigilance has filed the affidavit annexing the list of 90 cases. Most of the cases are pending at the stage of investigation. Oldest being of the year 1990.

7. The affidavit preferred by Shri H.C. Awasthy, Additional Director General of Police discloses the pendency of cases at the stage of investigation with Economic Offences Wing and Vigilance Establishment of the State. The affidavits filed explicitly disclose that tentacles of corruption have not left the public servant untouched.

8. In view of the factual situation, as has been disclosed through various affidavits, and as argued the controversy, which requires the consideration by the Court is with respect to the prosecution sanction and various other factors responsible for undue delay in the investigation.

9. It is settled proposition of law that if the accusation is made against anyone and conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie offence is made out should be prosecuted expeditiously so that the majesty of law is upheld and rule of law is vindicated. This legal proposition has been reiterated by Hon"ble the Apex Court time and again. Observation to this effect has been made in the case of Vineet Narain v. Union of India 1997 (Supl.) ACC 195 (SC).

10. So far as the prosecution of public servants is concerned, special protection is available to them either it be of according prosecution sanction under section 19 of Prevention of Corruption Act or it be a case under section 197 Cr.P.C., (whichever is attracted).

11. The public servants are treated as a special class of persons enjoying the

said protection so that they can perform their duties without fear and favour and without threats of malicious prosecution, but at the same time, the protection so conferred in law should not become shield to protect corrupt officials.

12. The scope of according prosecution sanction is limited and not quasi judicial in nature rather administrative. The appropriate authority is required in law to apply its mind in according the prosecution sanction, without undue delay. Delay in according the prosecution sanction may adversely affect the purpose of speedy trial. At the same time, the prosecution sanctioning authority should remain conscious about the public confidence in maintaining the rule of law, which is the very important aspect of administration of justice. Hon''ble the Apex Court considered the delay aspect in according prosecution sanction and issued the appropriate directions. Hon''ble the Apex Court was pleased to issue a direction in Vineet Narain and Others Vs. Union of India (UOI) and Another, AIR 1998 SC 889 : (1998) CriLJ 1208 : (1997) 10 JT 247 : (1999) 1 SCALE 442 : (1997) 7 SCALE 656 : (1997) 6 SCALE 16 : (1998) 1 SCC 226 : (1997) 6 SCR 595 Supp : (1998) AIRSCW 645 : (1997) 10 Supreme 476 , and was pleased to observe time limit of three months for grant of sanction for prosecution and must be strictly adhered to. However, additional time of one month may be allowed, where consultation is required with "Attorney General or any other law officer in the Attorney General Office". The proposition laid down in Vineet Narain (Supra) for time frame discharge of obligation regarding grant of prosecution sanction has been duly approved by Hon''ble the Apex Court in subsequent pronouncement of Dr. Subramanian Swamy Vs. Dr. Manmohan Singh and Another, AIR 2012 SC 1185 : (2012) CriLJ 1519 : (2012) 2 JT 203 : (2012) 1 RCR(Criminal) 720 : (2012) 2 SCALE 12 : (2012) 3 SCC 64 : (2012) AIRSCW 1249 : (2012) 1 Supreme 577 .

13. In view of the proposition discussed above, we issue a general direction that wherever any accusation is made against any public servant, which is pending and the evidence collected during the course of investigation prima facie disclosing commission of an offence, in such situation, the appropriate government or authorities as the case may be is required to accord permission for prosecution sanction without any delay within the time frame as observed by Hon''ble Supreme Court. However in extreme cases, where any consultation is required as contemplated in the aforesaid rulings, one month's extra-time may be utilized for according prosecution sanction.

14. We further direct the Investigating Officer and the superior officers supervising the investigation to remain conscious that as soon as the investigation comes to its logical ends, disclosing commission of an offence by public servants, they should promptly take appropriate measures for obtaining the prosecution sanction.

15. The second aspect, which requires the attention of this Court is regarding the delay in investigation. The cases in which, no expert evidence is required or the involvement of the Forensic Science Laboratory is not there, in such matters, we

direct the Investigating Officers and the superior officers to ensure fair and expeditious investigation, which is the constitutional right of informant, the victim, if any, or the accused.

16. In cases, where the reports of expert opinion are required with respect to thumb impression or signatures, these matters should be expedited. In certain matters any report regarding chemical examination of the subject-matter of the offence is required, such cases should be expedited.

17. The affidavit of Shri Bhanu Pratap Singh, Director Vigilance also discloses paucity of staff of the rank of Inspector, meaning thereby that the Investigating Officer are not available as per the sanction strength in the rank of inspectors.

18. The investigating officer is under legal obligation to conclude the investigation expeditiously and fairly.

19. Superior Officers, supervising the investigation are under obligation to issue appropriate guidelines and suggest measures to the Investigating Officers so as to ensure expeditious investigation of the case.

20. The State of U.P. is expected to fulfill the strength of various investigating agencies to the extent of their sanctioned strength of officers as early as possible.

21. The State Government is directed to appoint more officers in the Forensic Science Laboratory of the State and issue funds for purchase of equipments, which are required after the recruitment of the staff at different levels to make the laboratory effective so as to ensure expert report expeditiously. With these observations/directions, the writ petition is disposed of.