
(2015) 05 AHC CK 0144

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. 12763 of 2015

Kuldeep Sharma

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 25-05-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Constitution of India, 1950 — Article 226

Penal Code, 1860 (IPC) — Section 34, 420, 467, 468, 471

Citation : (2016) 1 ACR 443 : (2015) 5 ADJ 636 : (2016) 1 ALJ 151

Hon'ble Judges : Sudhir Agarwal, J; Dinesh Gupta, J

Bench : Division Bench

Advocate : Raghuvaran Chandra and Ram Jee Saxena, for the Appellant

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the petitioner and perused the record. By means of present writ petition, petitioner is seeking quashing of the First Information Report dated 16.4.2015, registered as Case Crime No. 261 of 2015, under Sections 420, 467, 468, 471 and 34 I.P.C., Police Station Modinagar, District Ghaziabad.

2. From a perusal of First Information Report and taking the allegations contained therein to be true, it cannot be said that commission of a cognizable offence is not made out. Despite repeated query, learned counsel for the petitioner also could not show that no offence whatsoever has been made out in the aforesaid First Information Report. Therefore, question of its quashing in the limited scope of judicial review in writ petition under Article 226 of the Constitution does not arise.

3. Learned counsel for petitioner, at this stage, stated that even if the F.I.R. has not to be quashed and the writ petition has to be dismissed, this Court may pass an interim order protecting the petitioner from arrest.

4. The submission is thoroughly misconceived.

5. Once the writ petition has to be dismissed, this Court has no power to pass any order in the nature of interim or interlocutory order. The Apex Court has deprecated such practice and has held, if final relief has been declined, no interim relief/interim order should be granted to petitioners. The first such case is *The State of Orissa Vs. Madan Gopal Rungta*, AIR 1952 SC 12 : (1952) 18 CLT 45 : (1952) 1 SCR 28 . Therein High Court declined to grant final relief on the ground that there was an alternative remedy available to petitioner and, therefore, dismissed the writ petition relegating petitioner to avail alternative remedy, but then observing that before filing suit, 60 days' notice under Section 80 C.P.C. will have to be given, which will take some time, an interim relief was granted. Deprecating this, Apex Court said that grant of relief under Article 226 is founded only on its decision that a right of the aggrieved party has been infringed. Therefore, existence of right is foundation of exercise of jurisdiction under Article 226. When the Court has decided nothing at all in respect to rights of parties, it would not be justified to grant any relief, final or interim, as the case may be, since Article 226 does not confer such jurisdiction. In para 6 of the judgment, the Court said:

"In our opinion, Article 226 cannot be used for the purpose of giving interim relief as the only and final relief on the application as the High Court has purported to do. The directions have been given here only to circumvent the provisions of Section 80 of the Civil Procedure Code, and in our opinion that is not within the scope of Article 226. An interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in a suit or proceeding. If the Court was of opinion that there was no other convenient or adequate remedy open to the petitioners, it might have proceeded to investigate the case on its merits and come to a decision as to whether the petitioners succeeded in establishing that there was an infringement of any of their legal rights which entitled them to a writ of mandamus or any other directions of a like nature; and pending such determination it might have made a suitable interim order for maintaining the status quo ante. But when the Court declined to decide on the rights of the parties and expressly held that they should be investigated more properly in a civil suit, it could not, for the purpose of facilitating the institution of such suit, issue directions in the nature of temporary injunctions, under Article 226 of the Constitution. In our opinion, the language of Article 226 does not permit such an action. On that short ground the judgment of the Orissa High Court under appeal cannot be upheld."

6. The aforesaid dictum has been followed in *Amarsarjit Singh Vs. The State of Punjab*, AIR 1962 SC 1305 : (1962) 3 SCR 346 Supp , *Cotton Corporation of India Limited Vs. United Industrial Bank Limited and Others*, AIR 1983 SC 1272 : (1984) 55 CompCas 423 : (1983) 3 CompLJ 171 : (1983) 2 SCALE 324 : (1983) 4 SCC 625 : (1983) 3 SCR 962 and recently in *Km. Hema Mishra Vs. State of*

U.P. and Others, AIR 2014 SC 1066 : (2014) AIRSCW 624 : (2014) CriLJ 1107 : (2014) 2 JT 26 : (2014) 1 SCALE 342 : (2014) 4 SCC 453 .

7. In view thereof, we have no hesitation in observing that the prayer for quashing the F.I.R. if is declined on the ground that allegations contained therein discloses cognizable offence, therefore, no interference is called for at this stage, this Court would not be justified in granting any relief as an interim order by staying arrest since it will amount to grant a relief to the petitioner without deciding his right in any manner and this would be against the exposition of law settled by Apex Court in the aforesaid decisions.

8. Even otherwise, at this stage, this Court is not examining legality or otherwise of arrest made by police, since neither any one has been arrested nor this writ petition as such has been filed with a complaint that police or investigating officer has committed violation of any provision pertaining to arrest of any person or the petitioner himself. The main relief in the writ petition is for quashing of First Information Report which, admittedly having disclosed commission of cognizable offence is not liable to be interfered with at this stage.

9. In view of above, no interference is called for. The writ petition is dismissed.