
(2002) 08 AHC CK 0190

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 1171 of 2002

Kumari Meera and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-08-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2003) CriLJ 2729

Hon'ble Judges : Bhanwar Singh, J

Bench : Single Bench

Advocate : U.B. Singh, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Bhanwar Singh, J.—This petition has been filed u/s 482, Cr. P. C. praying for quashing of the First Information Report (Annexure 1).

2. Shortly stated, the petitioner's case is that Promod Kumar, son of the petitioners 3 and 4 was married to the informant Basant Lal's daughter Anita in the month of July, 2000. No dowry was demanded either at the time of marriage or thereafter. Promod Kumar and Anita could not carry harmonious relationship between the two. Their nuptial knot started slacking due to the unceremonious interference of Anita's Jija (sister's husband), namely Pyare Lal, who started visiting Anita and he carried on with his visits despite restrictions imposed by Promod Kumar. At times, Pyare Lal misbehaved with the petitioners. Promod Kumar's complaint lodged with the police regarding misbehaviour of Pyare Lal did not move the police to take any action. Pyare Lal became so devil that he came to the petitioner's house on June 28, 2002 and carried away forcibly Anita extending threats to the petitioners and their other family members of dire consequences. The petitioner No. 3 was also abused and beaten by Pyare Lal. Her injuries were examined in the Government Hospital. In order to neutralize the petitioner's complaint, Anita's father Basant Lal lodged a false report (under challenge) reciting therein that the petitioners demanded from his daughter

dowry comprising Hero Honda motorcycle and a refrigerator and when the informant's son and son-in-law (Pyare Lal) requested for Anita being sent with them, the petitioners allegedly indulged in violence by beating Anita and also misbehaved with Pyare Lal and the informant's son. This occurrence was said to have taken place at 10.30 a.m. on 28-6-2002. As the entire story of alleged demand of dowry and causing injuries to Anita and others is concocted, the petitioners have filed this petition u/s 482, Cr. P. C.

3. The crucial question is as to whether a petition u/s 482, Cr. P. C. for quashing of a First Information Report is maintainable?

4. Supporting his contention that a petition u/s 482, Cr. P. C. is entertainable by the High Court, learned counsel for the petitioners has placed reliance upon a Supreme Court decision, *M/s. Pepsi, Food Ltd. v. Special Judicial Magistrate* 999 All Cri. R 438 : 1997 All LJ 2406 : 1997 AIR SCW 4084. Hon'ble Supreme Court observed in this decision that nomenclature under which a petition is filed is not quite relevant and that does not debar the Court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed and such procedure is mandatory. If in a case, the Court finds that the appellants could not invoke its jurisdiction under Article 226, the Court can certainly treat the petition under Article 227 of the Constitution or Section 482 of the Code of Criminal Procedure but it cannot be lost sight of that the provisions exist in the code of revision and appeal but some time for immediate relief, Section 482 of the Code or Article 227 may have to be resorted to for correcting grave errors but the condition for filing such petition is that the petitioner must establish that even on the face of the First Information Report or the complaint, no case is made out. While dealing with issue, the Hon'ble Court referred to an earlier decision in, *R.S. Raghunath Vs. State of Karnataka* and another, wherein some guidelines were laid to exercise extraordinary power under Article 226 of the Constitution or the inherent powers u/s 482, Cr. P. C. These guidelines may be enumerated as follows :

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or when the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

5. With reference to the above guidelines, the Supreme Court held that it is not necessary for the Court to embark upon an enquiry whether the allegations of the First Information Report are reliable or not and thereupon to render a finding whether any of the allegations is true. These matters can be examined by the concerned Court after the entire materials are placed before it on a thorough investigation. The Court is not called upon to examine the truth or otherwise of each of the incidents of the alleged offence. Further, it was observed that power of quashing of a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice. Exercise of such powers would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any Court or otherwise to secure the ends of justice. One of such guidelines is where the allegations made in the First Information Report, even if taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused. In other words, the High Court can interfere u/s 482, Cr. P. C. with the police investigation in certain circumstances.

6. This Court in a Full Bench decision in, *Ram Lal Yadav v. State of U. P.* 1989 LLJ 69 : 1990 All LJ 47 clearly laid down that the High Court has no inherent power u/s 482, Cr. P. C. to interfere with the arrest of a person by a police officer even when no offence is disclosed in the First Information Report or when the investigation is mala fide as the inherent powers of the Court to prevent the abuse of the process of the Court or to otherwise secure the ends of justice come into play only after the charge-sheet has been filed in the Court and not during investigation which may even be illegal and unauthorized. If the High Court is convinced that the power of arrest by police officer will be exercised wrongly or mala fide in violation of Section 41(1)(a), Cr. P. C., the High Court can always issue a writ of mandamus under Article 226 of the Constitution restraining the police officer from misusing his legal power.

7. Referring to these two decisions of this Court and the Supreme Court, Hon''ble Mr. Justice Katju of this Court held in a case, "Ram Shanker Pandey v. U.:P. Police/Station Officer, P.S. Kotwali, Ghazipur 1994 JIC 755: 1995 AIHC 2926 "that in view of the Supreme Court decision in State of Haryana and others Vs. Ch. Bhajan Lal and others, , the Seven Judges decision of this Court in Ram Lal Yadav's case 1990 All LJ 47 (supra) is no longer good law. Mr. Justice Katju in this judgment arrived at a conclusion that correct legal position is that the High Court in exceptional circumstance has power u/s 482, Cr.P.C. to quash the police investigation and/or quash the First Information Report and/or stay the arrest of the applicant and the High Court can interfere at with the investigation u/s 482, Cr.P.C. if it finds that the First Information Report is false and based on mala fide allegations.

8. Very recently, the Hon''ble Supreme Court in, State of Bihar and Another Vs. Md. Khalique and Another, has ruled while making a reference to State of Haryana and others Vs. Ch. Bhajan Lal and others, that -- "the power of "quashing a criminal proceeding should be exercised sparingly and with the circumspection and that too in the rarest of the rare cases."

9. The crux of the matter is that although a petition u/s 482, Cr.P.C. can be entertained for quashing of a First Information Report subject to the two conditions --the first being, that the First Information Report even if accepted to be correct on its face value does not disclose an offence, and, secondly, no cognizable offence is made out. But the Court is to interfere in the rarest of the rare cases and that too with circumspection.

10. Keeping all in view of what has been discussed above, I am inclined to hold that the complaint lodged by Basant Lal discloses a case against the petitioners. In other words, there is nothing on record to decipher that no prima facie case on the face of the complaint was made out; nor it appears to indicate that no cognizable case was disclosed so as to thwart the prosecution story. The victim of the dowry demand was medically examined on June 28, 2002 and a perusal of the medical report reveals that as many as four injuries, no doubt simple in nature, were suffered by her. Apart that, it may also be observed that it is not the rarest of the rare cases in which this Court's attention should be drawn so as to interfere with the investigation or quashing a report.

In the result, this writ petition being devoid of merit is liable to be dismissed.