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**(1999) 01 AHC CK 0030**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 46664 of 1993

Lakshmi Narain Pandey

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

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**Date of Decision :** 18-01-1999

**Acts Referred:**

**Citation :** (1999) 01 AHC CK 0030

**Hon'ble Judges :** Binod Kumar Roy, J and R.K.Singh, J

**Final Decision :** Dismissed

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## Judgement

1. The petitioner, who is undisputedly father of one Neelam Pandey, has come up with a prayer to command the respondents not to harass him and his wife in connection with any case or enquiry relating to his aforesaid son. His further prayer is to command Respondent No. 2 (The Chief Judicial Magistrate, Allahabad) to take an expeditious decision in regard to Case No. 537/1991 pending before the A.C.J.M.III, Allahabad.

2. The case of the petitioner is that his aforementioned son is disobedient and major and lives separately in another portion of the residential house bearing No. 24/42 Sarai Meer Khan, P.S. Kotwali, District Allahabad is alleged to be involved in antisocial activities; that in this backdrop the petitioner severed his relationship with him and also published an Advertisement in the newspaper "Dainik Jagran" dated 1971982 (appended as Annexure1); that despite all these, thrice the police came to the petitioner and harassed him and his wife; that the petitioner with his wife had to accompany the police to P.S. Kotwali, Allahabad in the evening and did not allow them to go home till next morning; that he moved the State through Home Minister, Lucknow for prohibiting the local police from harassing them by filing an application dated 1111991 (appended as annexure2); and that several times he attended the Court of the Chief Judicial Magistrate, Allahabad but as no action taken hence this writ petition.

3. In the counteraffidavit, (copy served on the petitioner on 1651995) which has been sworn by Sri Radhey Shyam Dwivedi, working as Station Officer, P.S.

Mutthiganj, Allahabad, it has been stated, inter alia, that he has been authorised to file it on behalf of Respondent Nos. 1, 3 and 4; that he is well acquainted with the facts of the case; that the petitioner has concocted a story, which is totally false; that the petitioner and his son are living jointly in the same house; that a First Information Report was lodged under Section 392, I.P.C. and an investigation was made by the Station Officer Sri Yogendra Kumar Rai in which three accused persons were identified and one of them Lakshmi Narain Pandey was arrested and chargesheet was already submitted on 16/1/1992 in Case Crime No. 106/92: that the writ petition was filed by the petitioner only to save his son from arrest; that presently there is no investigation or enquiry going on for tracing out either the petitioner or his son Neelam Pandey; that till date the petitioner has not been enquired by the concerned Police Station: and that this writ petition is not maintainable and is liable to be dismissed with costs.

4. Today the petitioner has filed a rejoinder affidavit in Court after serving its copy today on Sri Vishwa Jyoti Sahai, learned brief holder for the State of U.P. in which he has stated inter alia, that the petitioner along with his wife since almost one year has shifted to a rented house in Mohalla Bahadurganj; that it is wholly false and incorrect to allege that the petitioner is living jointly or at any point of time after 1992 was living with his son Neelam Pandey in the ancestral house; that the petitioner was neither named nor was he charge sheeted in relation to Case Crime No. 106/92 a copy of the First Information Report of the said case and the chargesheet appended as Annexures RAI and RA2 respectively, a perusal of which would show that the statements made concerning him are wholly false and incorrect and the deponent of the counter affidavit has deliberately sworn on oath and he is liable to be punished; the averment clearly shows the malice and illwill which the Police Officer shows against him; and that under the circumstances the writ petition is liable to be allowed with costs.

5. Sri A.K. Mishra, learned Counsel appearing in support of this writ petition, contended that in view of the statements made by the petitioner in the writ petition and the rejoinder affidavit the reliefs claimed for be granted whereas the submission of Mr. Sahai was that the Rejoinder be discarded which has been filed belatedly without any leave and the writ petition be dismissed as the Police does not require to interrogate the petitioner.

6. The petitioner was served with a copy of counter affidavit on 16/5/95 which was filed on 19/5/95. Nothing has been stated in the rejoinder about the delay which has been caused in its filing today after long gap of about three and half years. In the absence of any explanation of delay/laches or any prayer for condonation of delay occurred in filing of this rejoinder affidavit we discard it from our consideration.

7. According to the petitioner himself his son Neelam Pandey is involved in antisocial activities. True it is that a father can not be fastened with the criminal liabilities of his son but the police in order to find out his son is vested with powers to search out the premises which jointly belongs to petitioner and his

son. Naturally the police will be further justified in making necessary interrogation of the petitioner or his wife concerning whereabouts of their son. In doing so it cannot be said that the police has violated any fundamental right of the petitioner.

8. Annexure 2 attached to the writ petition is copy of an affidavit dated 11/9/11 of the petitioner filed in the Court of A.C.J.M. III, Allahabad in regard to Crime Case No. 537/91 State v. Sadashiv, under Sections 392 and 411, I.P.C. P.S., Mutthiganj, Allahabad. It has been stated therein, that he has no relationship for the last 10 years with his son Neelam Pandey, in connection with which he has already got a declaration published in a newspaper; that at about 11/12 of night of 30/10/92 Mutthiganj Police came out searching Neelam Pandey to his house and conducted raid, searched the house and interrogated his wife. The aforementioned affidavit was sent for enquiry to the Station Officer, Mutthiganj. In regard to the case of harassment set forth by the petitioner this is a solitary document which has been filed by him. The assertion of the petitioner that the house in question was "his house" stands belied by the averments made in the writ petition inasmuch as the house is a joint family property in which the son of the petitioner has also got share. It further appears that the police has made only one interrogation and that too of the wife of the petitioner and not his. In this backdrop we refuse to place reliance on this document.

9. For the reasons aforementioned this writ petition is dismissed.

10. The office is directed to hand over a copy of this order to Sri Vishwa Jyoti Sahai, learned brief holder for the State of U.P. within a week for its communication to the authority concerned. Petition dismissed.