
(2011) 09 AHC CK 0265
In the Allahabad High Court

Lal Dhari Maurya and Anr.

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 28-09-2011

Acts Referred:

Citation : (2011) 09 AHC CK 0265

Hon'ble Judges : Imtiyaz Murtaza, J and Ashok Pal Singh, J

Final Decision : Dismissed

Judgement

Ashok Pal Singh, J.—Heard learned counsel for the petitioners and learned Additional Government Advocate.

2. This writ petition has been filed for quashing an F.I.R and staying arrest of the petitioners in Case Crime No. 98 of 2011, under Sections 406, 420, police station Baluwa, District Chandauli.

3. By the amendment vide Act No. 5 of 2009, which has come into effect from 01.11.2010, it has been provided in Section 41(1)(b) Cr.P.C. that a person against whom credible information of being involved in a cognizable offence punishable with imprisonment of 7 years or less is reported to the police officer, the police officer, can only arrest an accused if he is satisfied that:

- (a) there is probability of the accused committing another offence,
- (b) for proper investigation of the offence,
- (c) to prevent such person from causing the evidence of the offence to disappear or his tampering with the evidence in any manner,
- (d) to prevent such person from making any inducement, threat or promise to the witnesses to disclose such facts to the court or to the police,
- (e) unless the person is arrested, his presence in court could not be ensured and the police officer has to record the reasons in writing before making such arrest.

The present case is one punishable with imprisonment upto 7 years. The petitioners should, therefore have no apprehension that he would be arrested unless there are conditions justifying his arrest as mentioned above and provided under section 41(1)(b) Cr.P.C.

4. Also under the newly introduced provision, section 41A Cr.P.C. (which has also been added by Act No. 5 of 2009, effective from 1.11.2010), in all cases where the arrest of such an accused is not needed in view of the provisions of section 41 (1) Cr.P.C., the police officer concerned is required to issue a notice directing the accused to appear before him at a specified place and time. However if at any time the accused fails to comply with the terms of the notice, or fails to identify himself, or the police officer is of the opinion that the arrest is required, he may arrest the said accused after recording his reasons for the same. The police powers of arrest will however be subject to any orders that may have been passed by the Competent Court.

5. Let a copy of this order also be given to the AGA within three days, for communication to the SSP/SP of the district concerned, for ensuring compliance of this order and the provisions of section 41 (1) and section 41 A Cr.P.C. in the present case, as well as all other cases punishable upto 7 years in his district by directing the investigating officers to refrain from arresting the accused routinely, unless the exceptional circumstances mentioned in sections 41(1)(b) or 41A Cr.P.C. exist in any case, whereupon the arrests may only be effected after recording the reasons for the same. The SSP/SP shall also monitor the genuineness of the reasons given by the investigating officer in the cases where he has arrested an accused.

6. Subject to the aforesaid observations no ground exists for interfering in the matter.

7. The writ petition is accordingly dismissed.