

(2005) 04 AHC CK 0117

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 2662 of 2005

Laltesh Upadhyay

APPELLANT

Vs

State of U.P. and Khushahal Chandra

RESPONDENT

Date of Decision : 05-04-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 404, 420, 467, 468, 471

Citation : (2005) 04 AHC CK 0117

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Advocate : M.P. Srivastava, for the Appellant; Dharmendra Singhal, A.R. Nadiwal and A.G.A., for the Respondent

Judgement

Poonam Srivastava, J.—Heard learned counsel for the applicant and learned A.G.A. Sri Dharmendra Singhal, Advocate has filed his memo of appearance on behalf of opposite party no. 3.

2. This application has been preferred invoking the inherent powers for quashing the entire proceedings in case No. 7438 of 2004, State v. Anuj Kumar, Police Station Sadar Bazar, District Saharanpur, under Sections 420, 467, 468, 471, 404, 506 I.P.C. The submission on behalf of the applicant is that the civil proceeding has been initiated on the basis of the F.I.R. with a view to pressurize the applicant and is liable to be quashed. It is also submitted that the police after investigation, had submitted a final report but later on the direction of the officer concerned, charge sheet was filed without any further investigation. The charge sheet has been annexed with this application to demonstrate that after submission of the final report, considerable pressure was wielded by the superior officer and the Investigating Officer submitted the impugned charge sheet. A supplementary affidavit has been filed stating therein that the learned Magistrate has taken cognizance on the basis of charge sheet without applying his judicial mind and passed the order dated 10.12.2004. summoning the accused in a

mechanical manner.

3. Looking to the facts and circumstances of the case and going through the record, I do not find it a fit case for quashing of the charge sheet and consequent summoning order right at the inception of the trial. This will amount throttling of the trial. The Apex Court has laid down the guidelines and carved out broad categories where the proceedings could be interfered and quashed in exercise of inherent powers. In the case of R.P. Kapur Vs. The State of Punjab, , State of Haryana and Ors. v. Chaudhary Bhajan Lal, (28) 1991 A.C.C. 111 (S.C.) , Union of India v. Prakash P. Hinduja and Anr. (47) 2003 A.C.C. 433 , where the legal position has clearly been settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie established the offence and only when the court is of the opinion that chances of ultimate conviction is bleak and therefore, no useful purpose is likely to be served by allowing the criminal prosecution to continue, the proceedings could be quashed. In the case of S.W. Palanitkar and Ors. v. State of Bihar and Anr. (44) 2002 A.C.C. 168 it has been ruled that quashing of the criminal proceeding is an exception than a rule. Therefore exercise of power should be consistent with the scope and ambit of Section 482 Cr.P.C. and should be limited to very extreme cases and must be treated as rarest of the rare cases so as not to scuttle the prosecution. On bare reading of the decisions of the Apex Court, I am of the view that the instant case is not one of the rarest of the rare case in which the proceedings or charge sheet can be quashed.

4. Taking the entire facts and circumstances into consideration and in view of the decisions of the Apex Court as well as of this Court, I do not find that prima facie case is made out for interference in exercise of inherent powers for quashing the proceedings. Accordingly, no case for quashing is made out and the application is rejected.

5. However, it has been brought to my notice that the arrest of the applicant was stayed during the investigation and after submission of the charge sheet, non bailable warrant has been issued against him. The prayer of the applicant for keeping the order issuing non bailable warrant in abeyance is granted. The applicant may approach the court concerned and claim discharge through his counsel and the court shall pass appropriate orders in accordance with law after giving an opportunity of hearing to the parties.

6. The non bailable warrants issued against the applicant shall be kept in abeyance and applicant shall not be arrested for a period of six weeks from today. During this intervening period, the applicant is permitted to claim discharge through his counsel. In the event, the application is rejected, the court shall consider the bail application moved on behalf of the applicant as expeditiously as possible.