
(2010) 03 AHC CK 0298
In the Allahabad High Court
Case No : Criminal M.W.P. No. 2975 of 2010

Manish Kumar Siddharth

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-03-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 395

Citation : (2010) 2 ACR 1613

Hon'ble Judges : Naheed Ara Moonis, J;Imtiyaz Murtaza, J

Bench : Division Bench

Advocate : V.M. Zaidi and S.M. Asghar, for the Appellant; A.G.A., for the Respondent

Judgement

Naheed Ara Moonis, J.—By means of this petition, the Petitioner has challenged the first information report registered at Case Crime No. 40 of 2010 u/s 395, I.P.C. police station Badalpur, district Gautam Buddh Nagar.

2. Heard learned Counsel for the Petitioner, learned A.G.A. for the State and perused the allegations of the impugned first information report.

3. The first informant is the owner of the Truck No. U.P. No. 30A-6427 which was carrying iron scrap of Pawan Kumar and others for transporting the same to M/s. Shankar Enterprises 120/17 Tikambarpur, Ghaziabad on 14.1.2010. The value of iron scarp weighing 59.5 quintals was Rs. 1,55,000. According to the allegations contained in the first information report the truck was being driven by Mohd. Yamin on 15.1.2010 and when the said truck reached near Centre Parade at 11 a.m. the employees of Sri Ram Transport Company who had financed the truck stopped the truck and forcibly took away the truck alongwith key and other papers relating to the truck and cash Rs. 11,000 which was given to the driver for route expenses.

4. Learned Counsel for the Petitioner submits that the Petitioner being financier

had full right to repossess the truck and he cannot be prosecuted for the offence u/s 395, I.P.C. In support of his submission, learned Counsel for the Petitioner placed reliance on the decision of Apex Court in the case of Sardar Trilok Singh and Others Vs. Satya Deo Tripathi, In the said case the summons issued against the financier were quashed by the Apex Court on the ground that the proceeding initiated was clearly an abuse of process of the Court. It was further observed that the dispute raised by the Respondent was purely of civil nature even if it is assumed that the facts stated by him were substantially correct. Another decision relied by the Counsel for the Petitioner is Charanjit Singh Chadha v. Sudhir Mehra 2001 (TLS) 35259 : 2001 (3) ACR 2480 , in which the Apex Court relying upon the case of Trilok Singh (supra) quashed the proceedings of the said case. Learned Counsel for the Petitioner also placed reliance in the case of Manager, ICICI Bank Ltd. Vs. Prakash Kaur and Others, the Apex Court has held that where the repossession of the vehicle by the financier by hiring muscle men was deprecated.

5. On the contrary learned A.G.A. submits that from perusal of the allegations made in the first information report a cognizable offence is clearly made out against the Petitioner.

6. We have perused the allegations of first information report and the decisions cited by the learned Counsel for the Petitioner. The allegations against the Petitioner substantially is that the truck alongwith iron scarp valuing Rs. 1,55,000 and cash Rs. 11,000 was forcibly snatched from the possession of the driver of the truck and it cannot be said that no criminal offence is disclosed. This is not a case where financier has only repossessed the vehicle.

7. The Full Bench of this Court in Ajit Singh alias Muraha v. State of U.P. and Ors. LVI (2006) ACC 433 : 2006 (3) ACR 2842 , reiterated the view taken by the earlier Full Bench in Satya Pal and Others Vs. State of U.P. and Others, that there can be no interference with the investigation or order staying arrest unless cognizable offence is not ex-facie discernible from the allegations contained in the first information report or there is any statutory restriction operating on the power of the Police to investigate a case as laid down by the Apex Court in various decisions including State of Haryana and others Vs. Ch. Bhajan Lal and others, attended with further elaboration that observations and directions contained in Joginder Kumar Vs. State of U.P. and others, contradict extension to the power of the High Court to stay arrest or to quash a first information report under Article 226 and the same are intended to be observed in compliance by the police, the breach whereof, it has been further elaborated, may entail action by way of departmental proceeding or action under the Contempt of Courts Act. The Full Bench has further held that it is not permissible to appropriate the writ jurisdiction under Article 226 of the Constitution as an alternative to anticipatory bail which is not invocable in the State of U.P. attended with further observation that what is not permissible to do directly cannot be done indirectly.

8. The learned Counsel for the Petitioners has not brought forth anything cogent

or convicting to manifest that no cognizable offence is disclosed prima facie on the allegations contained in the first information report or that there was any statutory restriction operating on the police to investigate the case.

9. Having scanned the allegations contained in the first information report the Court is of the view that the allegations in the first information report do disclose commission of cognizable offence and/ therefore no ground is made out warranting interference by this Court.

The petition is accordingly dismissed.