
(2009) 04 AHC CK 0820

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 5977 of 2009

Manoj Patidar

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 13-04-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 420, 467, 468, 471

Citation : (2009) 2 ACR 1757

Hon'ble Judges : Jayashree Tiwari, J; Amar Saran, J

Bench : Division Bench

Advocate : N.S. Chahar, for the Appellant; R.K. Singh and A.G.A., for the Respondent

Judgement

Amar Saran and Jayashree Tiwari, JJ.—Heard Shri Narendra Singh Chahar, learned Counsel for the Petitioner and Shri R. K. Singh, learned Additional Government Advocate.

2. This writ petition has been filed for quashing of an F.I.R. dated 13.1.2008 and for staying the arrest of the Petitioner in Case Crime No. 694 of 2008, u/s 60/72, Excise Act, Case Crime No. 695 of 2008, u/s 420/467/ 468/471, I.P.C. and Case Crime No. 696 of 2006, u/s 2/3 of Gangsters Act, Police Station Highway, district Mathura.

3. The allegations in the F.I.R. were principally that the accused was smuggling alcohol into U. P., from other States by the use of forged bill of lading of glucose powder when actually they were importing English liquor.

4. It was argued by the learned Counsel for the Petitioner that the Petitioner was not named in the F.I.R. and that he was only assigned the power of attorney by the company (Annexure-3) for obtaining the delivery of the property. It was further contended that he was not present at the time when the vehicle was seized and that it would be a travesty of justice if every person seeking release of a property on behalf of an accused-firm on the basis of a power of attorney

was also to be made an accused under the Gangsters Act.

5. Apart from the fact that the defence documents cannot be considered in this writ petition, learned Additional Government Advocate has drawn our attention to an application dated 23.10.2008, which has been annexed as Annexure-3 to the writ petition, wherein the Petitioner has himself stated in paragraph 2 that the Petitioner was travelling in the vehicle alongwith the driver from district Pipri (Andhra Pradesh). Therefore, it cannot be said that the Petitioner was a rank outsider with no concern about the incident against whom no F.I.R. ought to have been lodged or that his arrest should have been stayed.

6. In *Kishan Pal alias K. P. v. State of U. P. and Anr.* (54) 2006 ACC 1015, it is mentioned that there are four categories of cases relating to the Gangsters Act ; the first category of cases are those where several previous cases are initiated/pending prior to initiation of investigation under the Act. The second category of cases are those where a single case was initiated/pending prior to initiation of investigation. The third category of cases are those where inspite of acquittal under the Criminal Procedure Code, investigation has been initiated or kept pending under this Act ; and the last category of cases were those where no previous case was pending under any other law prior to the initiation of investigation under this Act.

7. It was held in the said decision relying on the decision of the Full Bench of this Court in *Ashok Kumar Dixit v. State of U. P. and Anr.* (24) 1987 ACC 164, that in none of these categories can the investigation be interfered with in the writ jurisdiction and that the special court concerned has jurisdiction in the matter.

8. Specifically the case of *Subhash v. State of U. P. and Anr.* (37) 1998 ACC 293 , was dissented from and it was observed that the Division Bench which had scrutinized the individual cases of investigation under the writ jurisdiction, had departed from the ratio of the Full Bench, which was binding on it. Relying on the decision in the case of *Shamshul Islam v. State of U. P.* (38) 1999 ACC 315, it was observed in *Kishan Pal alias K. P.* (supra), that where the original relief of quashing of the F.I.R. cannot be granted, the ancillary relief for staying of arrest can also not be granted.

9. For all these reasons, we find no good ground to quash the F.I.R. or to stay the arrest of the Petitioner. The writ petition is, therefore, dismissed.

10. However, it is provided that if the Petitioner appears or is produced before the Court concerned within three weeks and applies for bail, his bail application shall be heard and disposed of expeditiously in accordance with the provisions of the Gangsters Act.