
(2000) 09 AHC CK 0142

In the Allahabad High Court

Case No : Criminal M.W.P. No's. 310, 1741, 1743, 2996 and 3848 of 2000

Meenakshi Agarwal and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-09-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 170, 173(2), 41, 482
Penal Code, 1860 (IPC) — Section 129, 140, 147, 148, 149
Uttar Pradesh General Clauses Act, 1904 — Section 21, 4(42B)

Citation : (2000) 3 ACR 2061

Hon'ble Judges : U.S. Tripathi, J;J.C. Gupta, J

Bench : Division Bench

Advocate : V.P. Srivastava and K.D. Tiwari, for the Appellant; S.D. Kautilya, Samit Gopal and G.S. Chaturvedi and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

U.S. Tripathi, J.—Common questions of law and facts are involved in above writ petitions and therefore, all the above writ petitions are taken up together for disposal for which the learned Counsel for the parties have no objection.

2. Brief facts of the case giving rise to above writ petitions are as below:

Late Karmendra Narain Agarwal husband of Smt. Shashi Agarwal and father of Km. Meenakshi Agarwal and Manoj Narain Agarwal owned some property known as Prag Agricultural Farm, Gokul Nagar, P. S. Kichha, district Udham Singh Nagar. D. S. Sirohi, R. K. Yadav, Hanspal and Munna Lal were employees of late Karmendra Narain Agarwal, who managed the property owned by him. Km. Meenakshi Agarwal also owned a theatre known as Meenakshi Theatre, Ram Ghat Road, Aligarh. On the death of Karmendra Narain Agarwal, some dispute regarding property of the said Farm between widow on one side and daughter on the other side. Civil and revenue litigations were also going on between the parties including testamentary suits, which are pending in various Courts.

3. On 4.11.1999 at about 9.30 p.m., R. K. Yadav along with 40 more persons allegedly raided the house of Km. Meenakshi Agarwal. Quarrel took place and it is alleged that R. K. Yadav sustained injuries in it. Km. Meenakshi Agarwal lodged report of the said occurrence on said date at 10.30 p.m. at Police Station, Kichha, district Udham Singh Nagar, which was registered at Case Crime No. 960 of 1999 under Sections 147, 148, 140, 452, 323, 427, 506, 307 and 326, I.P.C. Manoj Narain Agarwal also lodged report of the said occurrence on 5.11.1999 at 2.10 p.m. at Police Station Kichcha against six persons including Meenakshi Agarwal, D. S. Sirohi, R. K. Yadav, Hanspal and Munna Lal at Police Station Kichcha, on the basis of which a cross case at Crime No. 960A of 1999 under Sections 147, 148, 149, 307, 504 and 506, I.P.C. was registered. Both the cases were being investigated by the local police and the police submitted charge-sheet in Case Crime No. 960 of 1999 against 41 persons. However, the police submitted final report on 29.11.1999 in cross Case Crime No. 960A of 1999, which was sent to senior prosecuting officer for scrutiny.

4. In the meantime, Manoj Narain Agarwal filed Writ Petition No. 7230 before this Court for transfer of investigation of Case Crime No. 960 of 1999 and 960A of 1999 from Superintendent of Police, Udham Singh Nagar to any other agency not under his control as fair and impartial investigation was not possible by the local police. The above writ petition was finally disposed of on 1.12.1999 by a Division Bench of this Court with the observation that it would be proper if the matter is looked into by the D.I.G. (Kumaun Region), Udham Singh Nagar, Nainital, who will ensure that fair and impartial investigation of the cross cases is conducted by the agency other than named above.

5. In view of above order dated 1.12.1999, the final report submitted in Case Crime No. 960A of 1999 was returned back and it was directed that the matter be investigated afresh by another officer and the matter is being investigated by another officer. Apprehending her arrest Km. Meenakshi Agarwal, D. S. Sirohi, R. K. Yadav, Hanspal and Munna Lal filed Writ Petition No. 310 of 2000 for issue of a writ, order or direction in the nature of certiorari quashing the F.I.R. in Case Crime No. 960A of 1999 under Sections 147, 148, 149, 307, 504 and 506, I.P.C., Police Station Kichcha, district Udham Singh Nagar with interim prayer for staying their arrest in the said case mainly on the ground that the police had submitted final report in the said case and there was no occasion for its reinvestigation. In the said Writ Petition No. 310 of 2000 filed by Km. Meenakshi Agarwal and Ors. this Court, vide order dated 19.1.2000 issued notice to Respondent No. 3 for filing counter-affidavit and directed the learned A.G.A. to file counter-affidavit on behalf of Respondent Nos. 1 and 2 and in the meantime it was directed that though the investigation of the case shall go on, the arrest of the Petitioners in Case Crime No. 960A of 1999 shall remain stayed. Smt. Shashi Agarwal also filed Writ Petition No. 1741 of 2000 for issue of a writ, order or direction in the nature of certiorari quashing the first information report in Case Crime No. 960A of 1999 lodged against her with an interim prayer for staying her arrest in the said case, which was ordered to be connected with Writ Petition No.

310 of 2000.

6. Thereafter, Km. Meenakshi Agarwal moved an application to the Chief Secretary, U. P. and also to Director General of Police, U. P. praying that investigation of Case Crime No. 960A of 1999 be directed to be investigated by C.B., C.I.D. Since no order was passed on her above application and she was apprehending that local police and the D.I.G. (Kumaun Range) would not investigate the case fairly and properly as they were under influence of local M.L.A., she filed Writ Petition No. 1743 of 2000 for issue of a writ, order or direction in the nature of mandamus directing the State of U. P. to direct investigation of Case Crime No. 960A of 1999, Police Station Kichcha, district Udham Singh Nagar, Nainital by C.B., C.I.D. The said writ petition was also directed to be connected with Writ Petition No. 310 of 2000.

7. On the application of Km. Meenakshi Agarwal dated 3.4.2000 praying that the matter may be directed to be investigated by C.B., C.I.D., the State Government, vide order dated 6.4.2000 directed the Case Crime No. 960A of 1999, Police Station Kichcha, district Udham Singh Nagar, Nainital to be investigated by C.B., C.I.D. Thereafter, the State Government reconsidered the order dated 6.4.2000 and vide order dated 11.5.2000 transferred the investigation from C.B., C.I.D. to local police by recalling order dated 6.4.2000 and, therefore, investigation was handed over from C.B., C.I.D. to local police again. In pursuance of the order dated 19.5.2000, local police took up the matter and started investigation. Smt. Shashi Agarwal filed Writ Petition No. 2996 of 2000 for issue of a writ, order or direction in the nature of certiorari quashing the order dated 11.5.2000 passed by the State of U. P. and a writ of mandamus directing the C.B., C.I.D., to investigate the case and submit report in Case Crime No. 960A of 1999. In the said writ petition, notices were issued and in the meantime, the arrest of Petitioner, (Smt. Shashi Agarwal) was stayed in Case Crime No. 960A of 1999 till the next date of listing or until submission of charge-sheet, whichever, was earlier, vide order dated 4.7.2000. Thereafter, Manoj Narain Agarwal filed another Writ Petition No. 3848 of 2000 challenging the order dated 19.5.2000 for issue of a writ, order or direction in the nature of mandamus commanding the Respondents of said writ petition, the State of U. P., Secretary Home Department, U. P. Lucknow and D.I.G., Police Kumaun range not to interfere in the smooth and fair investigation being conducted under the direction of this Court by order dated 1.12.1999 except in accordance with law or prior permission of the Court and directing the D.I.G., Police Kumaun range (Respondent No. 4) to get the investigation concluded within stipulated period as deemed fit and proper by this Court mainly on the ground that he came to know that by order dated 5.6.2000 the Under Secretary Home has directed that the investigation be done jointly by the C.B., C.I.D. and local police and on the application of D.I.G., Kumaun range Respondent No. 4 had requested State Government to form a team of C.I.D. officers to help the local police in the investigation of the two cases, Case Crime Nos. 960 of 1999 and 960A of 1999 and Km. Meenakshi Agarwal was trying to get the investigation transferred in

spite of the specific order of this Court dated 1.12.1999 by concealing the fact and during pendency of Writ Petition No. 1743 being filed for the same prayer.

8. Counter-affidavits and rejoinder-affidavits were filed by the parties.

9. We have heard Sri G. S. Chaturvedi, Senior Advocate appearing on behalf of Manoj Narain Agarwal and Sri V. P. Srivastava, learned Counsel appearing on behalf of Km. Meenakshi Agarwal and Smt. Shashi Agarwal at great length and have perused the record.

10. The first question, which crops up for determination is whether the F.I.R. lodged in Case Crime No. 960A of 1999 is liable to be quashed?

11. A perusal of F.I.R. in Case Crime No. 960A of 1999 under Sections 147, 148, 149, 307, 504 and 506, I.P.C. Police Station Kichha, district Udham Singh Nagar shows that it discloses commission of cognizable offence. The contention of Sri V. P. Srivastava, Advocate was that the above F.I.R. was a counter blast of Case Crime No. 960 of 1999 lodged by Km. Meenakshi Agarwal against Manoj Narain Agarwal and Ors. and no such occurrence had taken place and that the above F.I.R. was mala fide.

12. The scope of interference by this Court either in the exercise of extraordinary power under Article 226 of the Constitution or its inherent power u/s 482, Cr. P.C. with the investigation of a cognizable offence has been examined in a number of decisions of the Hon'ble Supreme Court as well as of different High Courts and this Court in Full Bench decision in Satya Pal and Ors. v. State of U. P. and Ors. XL 2000 ACC 75, and it was held by the Full Bench that it has been consistently held that where the allegations in the F.I.R. taken at the face value and accepted in entirety do not constitute any cognizable offence the F.I.R. and the investigation thereon may be quashed. It also quoted the guidelines by way of illustrations given by Apex Court in the case of State of Haryana and Ors. v. Chaudhary Bhajan Lal and Ors. XXVIII 1991 ACC 111 (SC) and other cases of the Apex Court and concluded that on the basis of the allegations made in the F.I.R. and on a consideration of the relevant materials if the Court is satisfied that an offence is disclosed, the Court normally will not interfere with the investigation unless there is strong grounds or compelling reasons requiring interference in the interest of justice. However, upon consideration of relevant materials if the Court is satisfied and no offence is disclosed, it will be the duty of Court to interfere with the investigation so that alleged accused may not be unnecessarily subjected to harassment and humiliation.

13. Perusal of F.I.R. of Case Crime No. 960A of 1999 under Sections 147, 148, 149, 307, 504 and 506, I.P.C. (Annexure-3 to Writ Petition No. 1741 of 2000) shows that there is specific allegation that on 4.11.1999 at about 8 p.m. threats were extended to the complainant on his mobile phone and when the complainant reached near the gate of Farm on his Safari Car, indiscriminate firing was made on him and he sustained pellet injury and thereafter his vehicle was disbalanced and persons of Meenakshi Agarwal caused injuries on him. Thus, the

above F.I.R. discloses commission of cognizable offences. Whether such occurrence took place or not is to be decided by the trial court concerned on the basis of evidence of the parties. Truthfulness of the allegations and the establishment of the guilt can only take place when the trial proceeds without any interruption. As held by the Apex Court in the case of *State of Maharashtra v. Ishwar Piraji Kalpatri and Ors.* 1996 SCC 150, at the stage of quashing a first information report or complaint, the High Court is not justified in embarking upon an enquiry as to the probability or reliability or genuineness of the allegations made therein. If the ingredients which establish the commission of offence or misconduct exist then, the prosecution cannot fail merely because there was an animus of the complainant or the prosecution against the accused. Allegations of mala fides may be relevant while judging the correctness of the allegation or while examining the evidence. But the mere fact that the complainant is guilty of mala fides, would be no ground for quashing the prosecution. It was further held by the Apex Court in the case of *State of Bihar v. Rajendra Agrawalla* 1996 SCC 628, that at the initial stage, the High Court should not sift or appreciate the evidence and come to the conclusion that no prima facie case is made out.

14. As held above, the F.I.R. discloses commission of cognizable offence, we are of the view that there is no ground for quashing the F.I.R. in Case Crime No. 960A of 1999.

15. A prayer has also been sought in Writ Petition Nos. 310 of 2000 and 1741 of 2000 for staying arrest of the Petitioner in Case Crime No. 960A of 1999. The question of arrest in case the Court does not find any ground for quashing the F.I.R. has also been considered in Full Bench decision of this Court in the case of *Satya Pal and Ors. v. State of U. P. and Ors.* (supra) and it was held in paragraph 40 as below:

Therefore, in appropriate cases if this Court is convinced that the power of arrest will be exercised wrongly or malafidely or in violation of Section 41(1)(a) of the Code, writ of mandamus can be issued restraining the police from misusing its legal power. However, the order staying arrest may be granted sparingly in exceptional cases and with circumspection, that too in the rarest of rare cases keeping in mind that any relief, interim or final during investigation which has the tendency to slow or otherwise hamper the investigation, should not be granted. Our opinion further gains support from a recent judgment of the Apex Court in the case of *M/s. Pepsi Foods Ltd. v. Special Judicial Magistrate XXXVI* 1998 ACC 20 SC, wherein while dealing with the power and jurisdiction of this Court under Article 226 of the Constitution and Section 482 of the Code, it has been observed as follows:

The power conferred on the High Court under Articles 226 and 227 of the Constitution and u/s 482 of the Code have no limits but more the power more due care and caution is to be exercised in invoking these powers.

16. Since, the F.I.R. discloses commission of cognizable offence and the matter

requires investigation and F.I.R. is not liable to be quashed, the arrest being part of investigation cannot be stayed. Sri V. P. Srivastava further contended that none of the requirements of Section 173(2), Cr. P.C. require that an accused must be arrested during investigation, but we find no force in the above contention as Section 170, Cr. P.C. clearly says that if, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed. Moreover, Section 41, Cr. P.C. also empowers any police officer to arrest without an order from a Magistrate and without a warrant, any person who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned.

17. Sri V. P. Srivastava further placed reliance on paragraph 41 of the observation of Full Bench in Satya Pal's case (supra). But we find that there is nothing on record to show that contingencies envisaged in the said paragraph are existing in this case.

18. The next point urged by Sri V. P. Srivastava, was that once the State Government had transferred the investigation of the case from local police to C.B., C.I.D., it cannot recall the said order and re-transfer the investigation to local police and therefore, order dated 11.5.2000 passed by the State Government is liable to be quashed. He further contended that the Division Bench case of this Court in Bhopal and Ors. v. State of U. P. and Ors. XXXIV 1997 ACC 371, does not appear good law in view of Apex Court decision in Munir Alam v. Union of India and Ors. XXXIX 1999 ACC 230. On the other hand, Sri G. S. Chaturvedi contended that if the State Government has power to transfer investigation from local police to C.B., C.I.D. it has power to recall or rescind the said order in view of Section 21 of U. P. General Clauses Act and that the decision of Apex Court in Munir Alam's case (supra) is distinguishable on the facts of the case.

19. In the case of Bhopal and Ors. v. State of U. P. and Ors. (supra), one Raghubir was murdered in the evening of 5.10.1994 and the F.I.R. of the incident was lodged by one Rajpal Singh alleging that the applicants had committed his murder by assaulting him with knives. A case was registered as Crime No. 129/94 u/s 302, I.P.C. at Police Station Doghat district Meerut against all the three applicants. The local police investigated the matter and after investigation submitted a charge-sheet dated 25.11.1994 in the Court of C.J.M., Meerut. It appears that before the charge-sheet had been submitted by the local police, the State Government had passed an order directing that the case shall be

investigated by C.B., C.I.D. Subsequently, the State Government passed an order on 4.8.1995 by which the earlier order directing investigation by C.B., C.I.D. was rescinded and it was further provided that the local police shall investigate the case. The said order was challenged in the writ petition. It was contended that once the State Government passes an order transferring the investigation to C.B., C.I.D., it should not re-transfer, the same back to local police. The Division Bench quoting and considering the notification of the Government No. 4173/c/vi-e-e-27P/94, dated 15.9.1994 held as below:

There is no such prohibition under any statute nor there is any such rule, notification or order that once the State Government has transferred investigation from local police to C.B., C.I.D., it cannot recall or rescind the said order and entrust the investigation back to the local police. In fact, such a power is possessed by the State Government in view of Section 21 of U. P. General Clauses Act which provides that where by any Uttar Pradesh Act a power to issue statutory instrument is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and condition (if any) to add, amend, vary or rescind any statutory instrument so issued. In view of Section 4 (42B), any notification or order would be a statutory instrument. Therefore, the State Government has the power to rescind the order by which investigation may have been entrusted to the C.B., C.I.D. and such a power can be exercised at any subsequent stage.

With the above observation the writ petition was dismissed.

20. In the case of *Munir Alam v. Union of India* (supra) relied on by Sri V. P. Srivastava, on the night intervening on October 1 and 2, 1996 in the vicinity of the lodge of Vice Chancellor, Aligarh Muslim University firing took place in which Nadim Alam, the 20 year old son of the Petitioner was killed. A formal report was filed by Respondent No. 3 (Proctor of the University) on October 2, 1996 which was incomplete and therefore, an additional report in continuation of the earlier report was also filed. The local police on investigation submitted final report in the committal Court. The Petitioner in writ petition before the Apex Court challenged the submission of final report on the ground that the investigation into the incident of firing was conducted in a wholly slipshod and a biased manner. The Petitioner, therefore, inter alia prayed in the petition that a fair investigation be got conducted into the incident through the C.B.I. and to punish the guilty and award exemplary damages to the family of the deceased. The Apex Court besides issuing notices to opposite parties also directed Sessions Judge Aligarh to inquire into the matter himself or to get it inquired by a competent officer, not below the rank of an Additional Sessions Judge and to submit the report of inquiry to the Court within two months from the date of communication of order. The matter was inquired by I Vth Additional District and Sessions Judge, Aligarh and report was submitted. In the meantime, the Senior Superintendent of Police and District Magistrate, Aligarh appointed Chief Development Officer, Aligarh and the Superintendent of Police, Aligarh (Rural

Area) as Inquiry Officers to inquire into the matter, who also submitted report, which was produced before the Apex Court. It was held by the Apex Court that since the Court was seized of the matter and had required the Additional District and Sessions Judge to hold an inquiry, their Lordships fail to understand how the State Government could have, after the report of the Additional District and Sessions Judge was submitted to the Court, directed an enquiry by the two Officers of the State Government. On the basis of report of I Vth Additional District and Sessions Judge the Court considered it necessary with a view to arrive at the truth, that the entire matter be got investigated through the Central Bureau of Investigation (C.B.I.). Accordingly, Director, C.B.I. was directed to hold an enquiry/ investigation into the incident which occurred during the intervening night of October 1 and 2, 1996 and into the related matters.

21. The facts of the above case are thus distinguishable from the facts of the present case. In the said case, the Apex Court was seized of the matter and had directed the Sessions Judge, Aligarh to hold enquiry and submit report. No such contingency existed in the instant case and facts of instant case are fully covered with the facts of Bhopal's case (supra).

22. Moreover, in the above case, the complainant himself had challenged the investigation by the local police. It has further been held in Bhopal's case that a case where a complainant or victim comes to the Court and makes a grievance that the local police is not investigating the crime fairly stands on entirely different footing. In such a case the Court may issue a direction for investigation by C.B., C.I.D. or some other impartial agency so that the crime is properly investigated and the confidence of the public at large is restored. In the instant case nothing has been shown that the case was complicated one or was of a public interest and therefore, investigation be done by C.B., C.I.D.

23. Moreover, the order of the State Government dated 11.5.2000 shows that the transfer of investigation from C.B., C.I.D. to local police was ordered in pursuance of the order of this Court dated 1.12.1999 passed in Criminal Misc. Writ Petition No. 7230 of 1999, which directed that D.I.G. (Kumaun Region) shall personally look into the matter and will ensure that fair and impartial investigation of the cross cases is conducted. The order dated 1.12.1999 of this Court passed in Criminal Misc. Writ Petition No. 7230 of 1999, shows that the Court had directed D.I.G. (Kumaun Region), Udham Singh Nagar, Nainital to ensure that fair and impartial investigation of the cross cases is conducted by the agency other than named above. This shows that the Court meant that the investigation will be looked into by the D.I.G. (Kumaun Region) i.e., the Investigating Agency under his control. The above order, therefore, cannot be interpreted that the investigation was directed to be conducted by C.B., C.I.D. as the C.B., C.I.D. is not under the control of D.I.G.

24. Thus, we find that there is no ground for interference with the order dated 11.5.2000 passed by the State Government.

25. Sri G. S. Chaturvedi, senior advocate lastly contended that the D.I.G. (Kumaun Region) had sent a letter to Principal Secretary Home, U. P. Government, Lucknow dated 25.5.2000 that a team of C.I.D. officers be formed to help in the investigation by the local police, which means that the C.B., C.I.D. would interfere in the investigation by local police. Having gone through the above letter, Annexure-13 to the counter-affidavit filed in Writ Petition No. 3848 of 2000, we find that there is no force in the above contention as the local police had simply sought assistance of a team of officers of C.I.D. in the investigation and it does not mean that C.B., C.I.D. will conduct investigation.

26. In view of our above discussions and observations, we are of the view that the writ petitions have no force. However, it should be made clear that the police will not arrest simply because F.I.R. has been lodged against Petitioners of Writ Petition Nos. 310 of 2000 and 1741 of 2000 and police will resort to the power of arrest when allegations made in the F.I.R. are found genuine or credible evidence/material is collected against Petitioners regarding commission of offence. We hope and trust that Investigating Agency shall act fairly and honestly and will take coercive steps against the Petitioners only after verifying the above allegations made against the Petitioners.

27. With these observations Writ Petition Nos. 310 of 2000, 1741 of 2000, 1743 of 2000, 2996 of 2000 and 3848 of 2000 are dismissed.