

(2002) 09 AHC CK 0009

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 3249 of 2002

Mohammed Ashraf

APPELLANT

Vs

Sushri Mayawati, Chief Minister and Others

RESPONDENT

Date of Decision : 18-09-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2003) CriLJ 684

Hon'ble Judges : V.R. Tripathi, J;M.C. Jain, J

Bench : Division Bench

Advocate : Khan Saulat Hanif, S.M.A. Kazmi and Ravinder Sharma, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

M.C. Jain, J.—Against the petitioner, respondent No.5 Mohd. Ashraf son of Ataullah has lodged an F.I.R. on 22-6-2002 at 2.15 P.M. at P. S. Kareli, district Allahabad which has resulted in registering of a case against him and others under Sections 147, 148, 149, 307, 504, 506 and 387 I.P.C., Annexure 1 to the writ petition. The petitioner has filed this petition claiming the following reliefs :

"i) to issue a writ, order or direction in the nature of Certiorari quashing the first information report dated 22-6-2002 in Case Crime No. 156 of 2002, under Sections 147, 148, 149, 307, 504, 506 and 387, I.P.C., Police Station Kareilly, District Allahabad contained in Annexure 1 to the writ petition.

ii) to issue a writ, order or direction in the nature of mandamus commanding the opposite parties directing them not to arrest the petitioner in Case Crime No. 156 of 2002 under Sections 147, 148, 149, 307, 504, 506 and 387, I.P.C. Police Station Kareilly, Allahabad.

iii) to issue a writ, order or direction in the nature of mandamus commanding the "opposite parties directing them to entrust the investigation of Case Crime No. 156 of 2002, Under Sections 147, 148, 149, 307, 504, 506 and 387, I.P.C., Police

Station Kareilly, Allahabad, to CBI or any other independent investigating agency.

iv) to issue any other writ, order or direction, which this Hon"ble Court may deem fit and proper under the facts and circumstances of the case, to which the petitioner may be found entitled in law."

2. The allegations in the F. I. R. are that on 22-6-2002 at about 12.30 P.M.. the petitioner opened two shots on him (respondent No.5) from his pistol. By providence, he escaped unhurt as he ran shouting towards Gaush Nagar. The F. I. R. makes reference to some earlier incident of July last year that M.L.A. Ateeq Ahmad had got him attacked in respect of which he had lodged (he F. I. R. at P. S. Dhoomanganj, district Allahabad. The said M.L.A. had commanded him not to tender evidence in that case, but he had not succumbed to that pressure. At the time of present incident, he was allegedly present at his plot of Beniganj, "60" ft. Road with Kalloo when the petitioner with his father, Naseem son of Kalian, Sharif, Puttari Baba and Ali Ahmad @ Phutter came to him and again pressurized to take back his case as otherwise he would be done away with. He retorted back that come what may, he would not take back his case. Then at the exhortation of his father and associated, the petitioner opened two shots on him.

3. We have heard Sri S. M. A. Kazmi, learned counsel for the petitioner in sufficient details and learned A. G. A. in opposition. It is urged by the learned counsel for the petitioner that it is an unusual coincidence that in the incident of 22-6-2002 forming the subject matter of the F. I. R. in question, respondent No.5 escaped unhurt and it was so even in the earlier alleged incident of July last year as is clear from the reading of the F. I. R. itself. It is reasoned that it is a clear pointer that an imaginary incident has been coined by respondent No. 5 to roap in the petitioner. According to the learned counsel for the petitioner, respondent No.5 is repeatedly filing false F. I. Rs against the petitioner and his other family members, because the petitioner happens to be the brother of M. L. A. Ateeq Ahmad.

4. It may be pointed out that in this writ petition, the Court is concerned with the F. I. R. of Crime No. 156 of 2002 relating to incident of 22-6-2002 we are of the opinion that it is no strange coincidence that respondent No. 5 escaped unhurt. There are clear allegations of two shots having been fired by the petitioner on him. The F. I. R. relates the incident in requisite details with the names of the witnesses being also given there. The matter requires probing by investigation and the incident cannot be taken to be unbelievable and imaginary at this stage simply because it is a case of "no injury".

5. It has vehemently been argued for the petitioner that he happens to be the brother of M.L.A. Ateeq Ahmad who is politically opposed to the present Chief Minister Sushri Mayawati and that respondent No.5 is being politically utilized by her to slap false cases against M.L.A. Ateek Ahmad and his other family members to settle the scores of political vendetta and the present F. I. R. is a part of that scheme and chain.

6. Learned counsel for the petitioner has invited our attention to Annexure 8 to the writ petition which is said to be the copy of proceedings of the Legislative Assembly dated 17th May 2002. It is sought to be emphasised with its help that when the petitioner was pointing out the Ideological framework of the present Chief Minister, she threatened that she would ensure that tears would come to his eyes.

7. So far as the alleged statement or threat of the present Chief Minister on the floor of the Legislative Assembly on 17-5-2002 is concerned, suffice it to say that the same cannot prima facie and rationally be interpreted as her mala fides against the petitioner's brother for getting him and his family members getting implicated in false criminal cases.

8. It is also pertinent to state that differences of ideology and policies are not unusual amongst the persons connected and associated with politics. But (he same does not permit the fanciful inference ice that one or the other would go to the level of implicating his adversary in false criminal cases through commoners having no mornings. To our mind it is too far fetched to hold at this stage that the petitioner has been falsely implicated in this case by respondent No.5 at the instance of the present Chief Minister of the State, Sushri Mayawati because he happens to be the brother of M.L.A. Ateeq Ahmad who is politically opposed to her. It may be stated that the case requires investigation as per the provisions of Criminal Procedure Code as the F. I. R. discloses commission of cognizable offence including that of attempt of murder u/s 307 I.P.C.

9. Regarding the allegation of mala fides in the lodging of present F. I. R. by respondent No. 5 as the tool of the present Chief Minister of the State, learned counsel for the petitioner has invited our attention to the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, in which norms have been laid down where extraordinary power under Article 226 of the Constitution of India or the inherent powers u/s 482 Cr. P. C. can be exercised by the Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Emphasis has been laid from the side of learned counsel for the petitioner on the following two norms categorized in the said ruling at Serial Nos. (5) and (7). :

"(5) Where the allegations made in the F. I. R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

10. Considering the allegations made against the petitioner in the present F. I. R., we are of the view that it cannot be said without stretching imagination to an unlimited extent that they (the allegations) are so absurd and inherently

improbable on the basis of which no prudent person can even reach a conclusion that there was sufficient ground for proceeding against the petitioner. It also cannot be held at this stage that the F. I. R. in question has been lodged with mala fide. It does disclose commission of cognizable offences and no interference, in our considered opinion, is called for by this Court in exercise of extraordinary prerogative writ jurisdiction under Article 226 of the Constitution of India to quash the F.I.R. in question. The law must take its own course. Quashing of the F. I. R. cannot be sought on this premise either that the allegations made are incorrect or false according to the petitioner. The extraordinary jurisdiction under Article 226 of the Constitution of India cannot be exercised for this purpose. We need not labour much on the point that the High Court does not ordinarily enter into the factual controversy in writ jurisdiction. When the F. I. R. discloses commission of cognizable offence(s), as is the case here, there is no ground for interference by the High Court to prevent the abuse of the process of any court or otherwise to secure the ends of justice. The case has to go through the ordinary system of law.

11. The Supreme Court has held in the case of *Manohar M. Galani v. Ashok N. Advani*, 2000 SCC 70 : AIR 2000 SC 2002 that the High Court is not justified in quashing the F. I. R. by an elaborate discussion on merits of the matter.

12. The normal rule is not to interfere with investigation and criminal proceedings, except when the complaint or the F. I. R. broadly read, does not disclose any offence and can be termed as abuse of process of law. If prima facie an offence is disclosed in the F.I.R., the High Court would decline to interfere with the statutory functions of the investigating agency and to quash the criminal proceedings.

13. As to the allegations of mala fides we have indicated above that there is no justification whatsoever at this stage to accept the same. Moreover, in the case of *State of Maharashtra and others Vs. Ishwar Piraji Kalpatri and others*, the Supreme Court has held that mala fides or animus of a complainant or prosecution is not relevant at the initial stage for quashing criminal proceeding. If on the basis of the allegations in the complaint a prima facie case is made out, the High Court has no jurisdiction to quash the proceedings. It is not justified in judging the probability, reliability or genuineness of the allegations made. If the complaint which is made is correct and the offence had been committed, which will have to be established in a Court of law, it is of no consequence that the complaint was by a person who was inimical or that he was guilty of mala fides. If the ingredients which establish the commission of the offence exist, then the prosecution cannot fail merely because there was an animus of the complainant or prosecution against the accused. The allegations of mala fides may be relevant while judging the correctness of the allegations 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.

14. So far as the question of transfer of investigation to an independent agency

is concerned, we would like to observe that normally the investigation should be done by the local police. The mere allegation that the local police would not investigate the case properly does not entitle the accused to pray for handing over the investigation to some other agency. In the case of Central Bureau of Investigation and another Vs. Rajesh Gandhi and another, the Supreme Court has held that the decision to investigate or the decision on the agency which should investigate, does not attract principles of natural justice. The accused cannot have a say in who should investigate the offences he is charged with.

15. Learned counsel for the petitioner has then referred to the case of Francis Coralie Mullin Vs. Administrator, Union Territory of Delhi and Others, wherein it was observed as under :

"Principle of interpretation which requires that a constitutional provision must be construed, not in a narrow and constricted sense, but in a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that the constitutional provision does not get atrophied or fossilized but remains flexible enough to meet the newly emerging problems and challenges applies with greater force in relation to the fundamental rights enacted by the Constitution. The fundamental right to life which is the most precious human right and which forms the ark of all other rights must, therefore, be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person."

Another ruling cited in Dadu @ Tulsidas Vs. State of Maharashtra, Stress has been laid on head-note "H" which is to the following effect :

"Constitution of India-Articles 226 and 32 -- Judicial Review -- Held, is the heart and soul of the constitutional scheme -- Judiciary is the ultimate interpreter of the Constitution and has the assigned task of determining the extent and scope of the powers conferred on each part of the Government and thus ensure that no branch transgresses its limits."

16. Indeed, the principles of interpretation of constitution and the constitutional philosophy enunciated by the Apex Court of the land through the above cited rulings do not brook any dispute. But the point of the matter is that having regard to the facts and circumstances of the present case that the F.I.R. in question discloses the commission of cognizable offences and that at this stage no mala fides can be held to be involved in the lodging of the said F. I. R., the petitioner is not entitled for any relief. We do not locate any merit in this writ petition for the detailed discussion made in the preceding paragraphs.

We accordingly dismiss this writ petition.