
(2012) 06 AHC CK 0039
In the Allahabad High Court

Munni Devi and Another

APPELLANT

Vs

State of U.P. Throu Prin. Secy. Home Lko. and Ors.

RESPONDENT

Date of Decision : 26-06-2012

Acts Referred:

Citation : (2012) 06 AHC CK 0039

Hon'ble Judges : Satyendra Singh Chauhan, J and Devendra Kumar Upadhyaya, J

Final Decision : Dismissed

Judgement

Satyendra Singh Chauhan & Devendra Kumar Upadhyaya, J.—Heard learned counsel for the petitioners and learned AGA.

2. Under challenge in the instant writ petition is FIR relating to Case Crime No. 128 of 2012, under Section 420 IPC and Section 3/7 Essential Commodities Act, Police Station Taalgaon, District Sitapur.

3. We have gone through the FIR.

4. So far petitioner no.2, Indrajeet Singh @ Indrajeet Verma is concerned, the writ petition has no merit and is accordingly dismissed.

5. Considering the fact that petitioner no.1, Smt. Munni Devi being lady, the following order is passed:

6. By the amendment vide Act No. 5 of 2009, which has come into effect from 01.11.2010, it has been provided in Section 41(1)(b) Cr.P.C. that a person against whom credible information of being involved in a cognizable offence punishable with imprisonment of 7 years or less is reported to the police officer, the police officer, can only arrest an accused if he is satisfied that:

(a) there is probability of the accused committing another offence,

(b) for proper investigation of the offence,

(c) to prevent such person from causing the evidence of the offence to disappear

or his tampering with the evidence in any manner,

(d) to prevent such person from making any inducement, threat or promise to the witnesses to disclose such facts to the court or to the police,

(e) unless the person is arrested, his presence in court could not be ensured and the police officer has to record the reasons in writing before making such arrest.

7. The present case is one punishable with imprisonment upto 7 years. Petitioner no.1 should, therefore have no apprehension that she would be arrested unless there are conditions justifying her arrest as mentioned above and provided under section 41(1)(b) Cr.P.C.

8. Also under the newly introduced provision, section 41 A Cr.P.C. (which has also been added by Act No. 5 of 2009, effective from 1.11.2010), in all cases where the arrest of such an accused is not needed in view of the provisions of section 41 (1) Cr.P.C., the police officer concerned is required to issue a notice directing the accused to appear before him at a specified place and time. However if at any time the accused fails to comply with the terms of the notice, or fails to identify himself, or the police officer is of the opinion that the arrest is required, he may arrest the said accused after recording his reasons for the same. The police powers of arrest will however be subject to any orders that may have been passed by the Competent Court.

9. Let a copy of this order also be given to the A.G.A. within three days, for communication to the SSP/SP of the district concerned, for ensuring compliance of this order and the provisions of section 41 (1) and section 41 A Cr.P.C. in the present case, as well as all other cases punishable upto 7 years in his district by directing the investigating officers to refrain from arresting the accused routinely, unless the exceptional circumstances mentioned in sections 41(1)(b) or 41A Cr.P.C. exist in any case, whereupon the arrests may only be effected after recording the reasons for the same. The SSP/SP shall also monitor the genuineness of the reasons given by the investigating officer in the cases where he has arrested an accused.

10. Subject to the aforesaid observations no ground exists for interfering in the matter in respect of petitioner no.1.

11. The writ petition in respect of petitioner no.1 is dismissed.