
(2011) 12 RAJ CK 0049
In the Rajasthan High Court
Case No : Civil Writ Petition No. 8461 of 2011

Narendra Khandelwal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-12-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 226(3)
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2012) 3 RLW 2649

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Arvind Kumar Gupta and Rinesh Gupta, for the Appellant; Anurag Sharma and S.C. Purohit, Additional Government Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Alok Sharma, J.—The matter comes up on the application under Article 226(3) of the Constitution of India moved by the respondent No. 4. Mr. A.K. Gupta, counsel for the petitioner submits that rather than addressing the application under Article 226(3) of the Constitution of India moved by the respondent No. 4 for vacation of the stay of the order dated 8th July, 2011, the entire writ petition should be addressed.

2. I am however, of the view that the request of Mr. Gupta cannot be considered to as the right to move an application under Article 226(3) of the Constitution is an independent right in view of the ex-parte ad-interim order passed by this Court.

3. Consequently, only the application under Article 226(3) of the Constitution is being addressed.

4. Heard counsel for the applicant respondent No. 4 and also the counsel for the non-applicant petitioner on the application under Article 226(3) of the Constitution of India.

5. Mr. Anurag Sharma, counsel for the applicant-respondent No. 4 has brought to my notice an order dated 11th November, 2011 passed in S.B. Criminal Misc. Petition No. 2076/2011 in the presence of the counsel for the petitioner herein, wherein the learned Single Judge of this Court has directed that FIR No. 473/2010 lodged by the petitioner against the respondent No. 4 at Police Station Kanhadi and FIR No. 102/2011 lodged by respondent No. 4 against the petitioner at Police Station Naya Pura, Kota be jointly investigated in a fair and just manner by the concerned Investigating Officer under the supervision of the Superintendent of Police, Kota. Counsel would submit that in view of the order dated 11.11.2011 where a direction has been issued for joint investigation of aforesaid two FIRs, the interim order passed in this petition staying further investigation of FIR No. 102/2011 ought to be vacated.

6. Counsel for the petitioner has further drawn the attention of the Court to the FSL report submitted by the State Forensic Science Laboratory Rajasthan, Jaipur on 15.6.2011 consequent to an application made by the Investigating Officer to the Civil Court in a pending suit for specific performance laid by the petitioner against the respondent No. 4, where-from the disputed agreement of sale dated 20.9.2004 was obtained. It is submitted that in the said FSL report it has very categorically been found that the signatures of respondent No. 4 on the agreement to sale were not in his hand but forged. Counsel would submit that in view of the aforesaid two circumstances the order dated 8.7.2011 should be vacated as no case for continuing the said ex-parte interim order can be made out.

7. Mr. Gupta appearing for the petitioner emphatically submits that the order dated 11.11.2011 passed in S.B. Criminal Misc. Petition No. 2076/2011 does not entail automatic vacation of the order dated 8.7.2011 passed by this Court in this petition. He submits that in fact the impugned FIR No. 102/2011 is a belated FIR. He submits that the dispute in issue is fundamentally a civil dispute which is sought to be criminalized by the respondent No. 4 without just cause.

8. Mr. Gupta has also drawn my attention to the order dated 8.12.2010 passed by the Sessions Judge, Kota in Bail Application No. 2894/2010 wherein the respondent No. 4 while in custody in the course of investigation of FIR No. 473/2010 arguing his own bail application has admitted that against the consideration for sale of the intended parcel of land the consideration except to the extent of Rs. 8000/- had been received. Mr. Gupta would submit that from the aforesaid fact a prima facie case to warrant stay of malicious prosecution of the petitioner in a completely false and belated case set up by the respondent No. 4 is made out and the application under Article 226(3) of the Constitution of India should be dismissed.

9. Having heard counsel for the parties and having perused the documents, referred to in the course of arguments, I am of the considered view that there is no occasion to continue the order dated 8.7.2011 primarily in view of the fact that as of today there is an FSL report dated 15.6.2011 pointing out to the fact

of the signatures of respondent No. 4 having been forged on the agreement dated 20.9.2004, of which the petitioner claims to be beneficiary. In the context in the complaint laid by respondent No. 4 in conjunction with the FSL report dated 15.6.2011 it cannot be even remotely be argued that the well defined situations for interference with the statutory powers of the police to investigate can be made out to warrant interference under Article 226 of the Constitution of India.

10. It is trite that an investigation by the Police in the exercise of statutory powers can only be interfered with in situations where from the FIR and the material on record no cognizable offence is made out. Such a situation does not obtain here.

11. For the aforesaid reasons, the order dated 8.7.2011 is vacated.

12. Mr. Gupta, after dictation of the order would submit that in view of the vacation of the order dated 8.7.2011 the writ petition evidently stands dismissed and it should be so dismissed formally.

13. On the request of Mr. Gupta, having considered the matter and for the reasons stated while vacating the stay order dated 8.7.2011 I am of the view that no case for exercise of the jurisdiction of this Court under Article 226 of the Constitution of India can be made out. Even otherwise, a writ under Article 226 of the Constitution of India ought not to be issued in view of availability of alternative remedy for impugning the FIRs by way a petition u/s 482 Cr.P.C. Reference in this regard can be made to a Judge of the Hon''ble Supreme Court in the case of State of Himachal Pradesh Vs. Shri Pirthi Chand and another, , wherein in para 13 of the judgment, the Hon''ble Supreme Court has said that when remedy u/Sec. 482 Cr.P.C. is available, the High Court should not exercise its power under Article 226 of the Constitution of India. This view commends to me also for the reason that if aggrieved party were to be allowed to lay a writ petition, an appeal from the order thereon one way or another will be available. As against the plurality of remedies to those who invoke Article 226 of the Constitution of India, a person invoking section 482 Cr.P.C. is confined to one remedy only before this court. This entails lack of commonality and uniformity in recourse to remedy before this court to those aggrieved of an FIR on whatever ground. Consistency and uniformity of the judicial process which is a virtue is thus lost. Further a 482 Cr.P.C. remedy is equally efficacious as it straddles the whole gamut of grounds being available, interalia, "to prevent abuse of the process of any Court or otherwise to secure the ends of justice".

14. It is in place also to record that the Hon''ble Supreme Court in several cases including the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, and in the case of Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, has indeed observed that the jurisdiction of this Court under Article 226 of the Constitution is equal and parallel to a jurisdiction of the Court u/Sec. 482 Cr.P.C. However, in my considered view the Hon''ble Supreme Court in the

aforesaid judgments has not addressed the issue of availability of alternative remedy as has been addressed in the case of Prithvi Chand (supra).

15. Consequently, the writ petition itself stands dismissed both on the merits of the case as also on the ground of availability of alternative remedy. The stay application is also dismissed.