
(2015) 01 AHC CK 0146

In the Allahabad High Court

Case No : Criminal Misc. Application No. 49664 of 2014

Piyush Raghuvanshi

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Income Tax Act, 1961 — Section 43, 72

Penal Code, 1860 (IPC) — Section 408, 420

Citation : (2015) 2 ACR 1793 : (2015) 89 ALLCC 203

Hon'ble Judges : Karuna Nand Bajpayee, J

Bench : Single Bench

Advocate : Ravish Kumar Singh and Brajesh Kumar Singh, for the Appellant

Final Decision : Dismissed

Judgement

Karuna Nand Bajpayee, J.

1. This application under section 482 Cr.P.C. has been filed for setting aside of the impugned order dated 26.9.2014 passed by Addl. Chief Metropolitan Magistrate-VII, Kanpur Nagar as well as entire proceedings in Complaint Case No. 496 of 2012, (M.K.U. v. Piyush Raghuvanshi) under sections 420, 408 IPC, and 43/72 of I.T. Act, Police Station Panaki, District Kanpur Nagar. Heard applicants' Counsel, learned Counsel for the opposite party No. 2 and learned AGA.

2. On a previous occasion, this application was directed to be connected with another Application under section 482 Cr.P.C. No. 41738 of 2014 which emanated probably from the same proceedings. Today, the record of the aforesaid application has not been sent. The Counsel has requested that this matter is independent in nature and it may be disposed of regardless to the contents of another file. On the request of the Counsel, the matter is being taken up and is being heard on merits.

3. The submission of the Counsel is that the applicant accused wanted permission from the Court below to leave the country and go abroad but the same application has been rejected by the Court below on two grounds. One is that the accused applicant was released on bail on the condition that the applicant shall not during the course of trial leave the country. Apart from this, the Court below was also not satisfied about any reasonableness of the grounds on the basis of which the aforesaid permission was sought on behalf of applicant. As the Court was also not satisfied on the sufficiency of grounds or its reasonableness, the permission to leave the country was refused.

4. The submission of the Counsel is that the undertaking given by the accused was only this much that before leaving the country, he shall inform the Court. According to the Counsel, the undertaking not to leave the country during trial was not given by the applicant. The Counsel has also drawn the attention of the Court to the aforesaid undertaking which has been annexed along with this application. The submission is that in this view of the matter, the application seeking permission ought not to have been refused by the Court.

5. I have considered the submissions raised on behalf of the applicant and have perused the record of the case in the light of the same.

6. In this context it is very relevant to note the contents of the bail order dated 21.2.2012 by way of which the accused was released on bail. The order is unambiguous and categorical in its terms. It is very much apparent from the perusal of the order that the Court had observed that on the condition of furnishing an undertaking to the effect that during the course of trial, the accused applicant shall not leave the country and shall not tamper with the evidence and shall also present himself on the dates fixed, he was to be released on bail. It is so apparent that the bail order was a conditional one and it was in compliance of this bail order that the undertaking was furnished on behalf of the accused. It seems that though he was required to give the undertaking as has been mentioned above, but in a very shrewd and cunning manner, the language of the undertaking was twisted. It appears that the Court below did not examine the disingenuously crafted language of the undertaking and missed to see the designedly introduced nuance in the language and the difference. The accused got released on bail in fact without furnishing the undertaking As was directed by the Court in the bail order. But this will not change the factual situation that he was actually required to give the aforesaid undertaking and in fact was to be released on that condition. It shall be wholly ironical and paradoxical both to entertain any such plea, as has been raised, and in fact it does not lie in the mouth of the applicant now to argue that because he had successfully not complied with the direction of the Court and had furnished an undertaking not exactly in accordance with the order passed by the Court and had successfully duped the Court, therefore, now his application seeking permission should not be refused in view of the fact that the undertaking given by the accused was only to the effect that before leaving the country, he shall inform the Court or that the

Court should not have refused the permission on the ground of the undertaking he was required to furnish according to the bail order. In fact, the facts and circumstances of the case are such, in which even the bail granted to the accused may also be cancelled by the Court below because of the noncompliance of the Court's order and also for playing trick with the Court proceedings. But while disposing of this application, this Court does not propose to enter into that matter any further. Suffice it to say that the impugned order rejecting the permission is a well founded order reflecting due application of judicial mind and there is absolutely no reason to make any interference in the same.

7. It is clarified that giving an undertaking not to leave the country during the trial does not mean that at any point of time in future, the applicant cannot seek the permission if the circumstances make it very essential for him to do so. For that purpose, he can always move an application. If the Court concerned is satisfied about the reasons and the grounds which may justify his leaving, the Court below can always look into the same and pass appropriate orders in that regard. The impugned order also reflects that the grounds shown were also wholly inadequate and the Court was not convinced about the reasonableness or the justifiability of the same and because of that reason also, the application was rejected. These are the matters of lower Court's discretion and this Court pays due regard to the same unless it is shown that the discretion exercised has been arbitrarily exercised or is defeating the ends of justice, this Court in ordinary course is loath to make any interference in the same. The impugned order cannot be castigated on any ground whatsoever.

8. It is further clarified that this order should not be construed to imply that any direction to cancel the bail of the accused is being issued by this Court. The bail has already been granted and there is nothing to indicate that the same has been misused. There is absolutely no allegation available about tampering the evidence also. But it shall be very much within the power of the Court to procure the correct undertaking from the accused applicant as he was required to submit according to the bail order dated 21.2.2012 which has also been annexed along with this application as Annexure No. 3. The application being sans merit stands dismissed as such.

Let a copy of this order be sent forthwith by quickest mode available, to the Court below.