

(2004) 11 AHC CK 0096

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 8439 of 2004

Pramod Chandra Srivastava

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 02-11-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 406, 409

Citation : (2004) 11 AHC CK 0096

Hon'ble Judges : M.C. Jain, J;K.K. Misra, J

Bench : Division Bench

Advocate : D.S. Mishra, C.K. Mishra and P.K. Srivastava, for the Appellant;
A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

M.C. Jain, J.—The petitioner is one of the accused in case crime No. 1572 of 2004, under sections 406 and 409 I.P.C., registered at Police Station Kotwali, District Ghazipur, lodged by respondent No. 4-the present Project Director, Ghazipur. The petitioner was Project Director, Ghazipur at the relevant time. He has come up with a prayer to stay his arrest in consequence of the said F.I.R.

2. The gist of the allegations made in the F.I.R. is that on the recommendation of Dr. Kailash Singh, M.L.C., a contract for fixation of 54 Sodium Solar Street Lights at the cost of Rs. 64,80,000/- had been given to M/s S.R.J. Solar Energy System Pvt. Ltd., New Delhi out of the M.L.C.n fluid of the said Legislator for the year 2003-2004. Total payment of Rs. 63.555 Lacs was made to the said firm from 7.2.2003 to 21.5,2004 in four instalments which was to the extent of 98% of the total amount, though the supplier had made only a fraction of the supply and that, too, of sub standard quality. On a complaint made by Dr. Kailash Singh, the Commissioner, Rural Development, U.P., Lucknow, which surfaced the bungling, made an inquiry. Consequently, the F.I.R. came to be lodged by the present Project Director, Ghazipur against Sumit Ranjan Jaina- supplier, the then. Chief Development Officer Daya Shankar, the present petitioner and the Project Officer

Sri Ram.

3. We have heard Sri D. S. Misra, learned counsel for the petitioner at length and the learned A.G.A. from the side of the State. The submission of Sri Misra is that no entrustment of money was ever made to the petitioner. The contract was given to the firm aforesaid on the recommendation of Dr. Kailash Singh, M.L.C., who had also recommended for making 75% payment to the said firm in advance. The petitioner was not even posted at Ghazipur on 7.2.2003 when the first payment was made to the supplier. He never withdrew any amount. The amount was directly paid to the supplier through chouse/Bank drafts, and not by him. The petitioner was not associated with any payment made to the supplier. Ingredients of the offences under sections 406 or 409 I.P.C. are not at all made out against him as per the averments made in the F.I.R. and as such he is entitled to the relief of stay of his arrest in consequence of the F.I.R. in question. To support his contentions, he has referred to various annexures filed with the writ petition.

4. On the other hand, learned A.G.A. has argued in opposition that the F.I.R. does disclose the commission of cognizable offence relating to misappropriation of huge public money and there can be no question of staying the arrest of the petitioner in consequence of the F.I.R. in question as he was the Project Director at the relevant time.

5. We have given our anxious consideration to the matter. We are of the opinion that, prima facie, the F.I.R. does disclose the commission of a cognizable offence. The legal position is well settled that first information report is not an encyclopedia, which must disclose all facts and details relating to the offence reported. What is significant is that information given must disclose commission of a cognizable offence. Even if the information does not furnish all the details, the Investigating Officer has to find out those details in the course of investigation and collect all the necessary evidence. The information given disclosing the commission of a cognizable offence only sets in motion the investigating machinery with a view to collect all necessary evidence and thereafter to take action in accordance with law.

6. Judging the present case with the above yardstick, it cannot be gainsaid that the work was to be performed in the jurisdiction of the petitioner whereof he was the Project Director. He being the Project Director was very much a part of conduit pipe, swindling huge public money. There is nothing to indicate at this stage that he raised any objection to successive payments being made to the supplier in violation of norms of fiscal discipline required to be observed in a Government Department. The result was that 98% payment was made to the supplier even when only fraction of the supply had been made and that, too, of sub-standard quality. What passed under the table is a matter of investigation and at this stage; this Court while exercising writ jurisdiction would not enter into factual controversy or into alleged defense of the petitioner. He cannot pray for stay of his arrest relying on his alleged passive attitude of closing his eyes to

what had been happening in the matter, which necessarily related to the part of his duty. The petitioner cannot claim stay of arrest in consequence of the F.I.R. in question by pleading that it does not disclose the ingredients of Section 406 I.P.C. or 409 I.P.C. against him. The informant is not obliged to reproduce the language of Sections defining such offences in the Indian Penal Code. We refrain from making any other observation to save the petitioner and prosecution from any prejudice at a later stage. We are in judgment that there is no ground whatsoever to accede to the prayer made by the petitioner in the writ petition. The law has to take its own course.

7. In the result, the writ. petition is dismissed However, it is provided that in case the petitioner appears before the court below and applies for bail in case crime No. 1572 of 2004, under sections 406/409 I.P.C, P.S. Kotwali, District Ghazipur, his bail prayer shall be considered as provided by seven Judges" decision dated 15.10.2004 in Criminal Misc. Writ Petition No. 2154 of 1995 (Smt. Amarawati and Anr. v. State of U.P.),