
(2012) 09 AHC CK 0272
In the Allahabad High Court
Case No : Criminal M.A. No. 25086 of 2012

Prema Nand Rastogi

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 28-09-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 41B, 482, 82, 83
Penal Code, 1860 (IPC) — Section 120B, 407, 409, 419, 420

Citation : (2013) 1 ACR 459

Hon'ble Judges : Ramesh Sinha, J

Bench : Single Bench

Advocate : Ashok Kumar Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

Ramesh Sinha, J.—Heard Sri Ashok Kumar Sharma. learned counsel for the applicant and learned A.G.A. for the State. By means of this application u/s 482, Cr. P.C., the applicant has made the following prayer which are quoted hereinbelow:

It is, therefore, prayed that this Hon''ble Court may kindly be pleased to stay the issuance of process u/s 83. Cr. P.C. in Crime No. 46 of 2008 under Sections 407, 419, 420, 467, 468, 471 and 120B, I.P.C. during the pendency of the present applicant before this Hon''ble Court and also pleased to quash the order of Judicial Magistrate, Mathura dated 1.5.2012 passed on the application of the applicant as well as the proclamation issued u/s 82, Cr. P.C. and also direct the Investigating Officer for holding the investigation fairly and impartially.

Else the petitioners shall suffer irreparable loss and injury and/or pass such further order or direction which may deem fit and proper under the circumstances of the case.

2. During the course of arguments It came into light that the applicant has

earlier preferred Criminal Misc. Writ Petition No. 6818 of 2011 in which he had made the following prayers:

It is, therefore, most respectfully prayed that this Hon''ble Court may very kindly be pleased to:

I. Issue the writ order or direction in the nature of certiorari to quash the impugned first information report against the/qua petitioner registered at Case Crime No. 46 of 2008 u/s 409/419/420/467/468/471/120B (Initially lodged as Case CrI. No. NIL/07. P.S. Navabad. Distt. Jhansi dated 21.11.2007). I.P.C. registered at the Police Station Refinery District Mathura as no offence is made out against the petitioner.

II. Issue writ, order, or direction in the nature of mandamus not to arrest the petitioners against the directive of Apex Court as held in Joginder Kumar's case.

III. Issue such other further writ order or direction to the Investigating Officer for conducting a fair investigation.

IV. Issue writ in nature of certiorari to quash the non-bailable warrant as well as the proclamation issued u/s 82, Cr. P.C. as these orders passed ignoring the view of Apex Court passed in Joginder Kumar's case.

V. Issue such other further writ order or direction which this Hon''ble Court may deem fit and proper in the nature and circumstances of the present case.

VI. Award the costs of the petition to the petitioner.

3. The aforesaid writ petition filed by the petitioner was dismissed by a Division Bench of this Court vide order dated 20.4.2011, The order passed by this Court is quoted hereinbelow:

Heard learned counsel for the petitioner learned A.G.A. appearing for the State.

The relief sought in this petition is for quashing of the F.I.R. registered at Case Crime No. 46 of 2008 under Sections 409, 419, 420, 467, 468, 471 and 120B, I.P.C. District Mathura.

The Full Bench of this Court in Ajeet Singh alias Muraha Vs. State of Uttar Pradesh, Station House Officer and Hans Raj, reiterated the view taken by the earlier Full Bench in Satya Pal and Others Vs. State of U.P. and Others, , that there can be no interference with the investigation or order staying arrest unless cognizable offence is not ex facie discernible from the allegations contained in the F.I.R. or there is any statutory restriction operating on the power of the Police to investigate a case as laid down by the Apex Court in various decisions including State of Haryana and others Vs. Ch. Bhajan Lal and others, attended with further elaboration that observations and directions contained in Joginder Kumar's case (Joginder Joginder Kumar Vs. State of U.P. and others, contradict extension to the power of the High Court to stay arrest or to quash an F.I.R. under Article 226 and the same are intended to be observed in compliance by

the Police, the breach whereof, it has been further elaborated, may entail action by way of departmental proceeding or action under the Contempt of Court Act. The Full Bench has further held that it is not permissible to appropriate the writ jurisdiction under Article 226 of the Constitution as an alternative to anticipatory bail which is not invocable in the State of U. P. attended with further observation that what is not permissible to do directly cannot be done indirectly.

The learned counsel for the petitioners has not brought forth anything cogent or convincing to manifest that no cognizable offence is disclosed prima facie on the allegations contained in the F.I.R. or that there was any statutory restriction operating on the police to investigate the case.

Having scanned the allegations contained in the F.I.R. the Court is of the view that the allegations in the F.I.R. do disclose commission of cognizable offence and/therefore no ground is made out warranting interference by this Court. The petition is accordingly dismissed.

4. From the record of the present case, it transpires that after dismissal of the writ petition on 20.4.2011, the applicant did not surrender before the court below. Proceeding u/s 82, Cr. P.C. had been initiated earlier to the dismissal of the writ petition against him which was also affixed at his house and a copy of the same has also been given to his son on 11.3.2011. Another notice u/s 82, Cr. P.C. was given to the applicant on 20.4.2012. a copy of which was annexed as Annexure-6 at page 28 of the present application, by the Investigating Officer informing the applicant that if he does not surrender before the court below then proceeding u/s 83, Cr. P.C. shall be initiated against him.

5. It further appears that on 20.4.2012. the Investigating Officer again got a proclamation issued u/s 82, Cr. P.C. against the applicant from the Judicial Magistrate Mathura by which the learned Magistrate again directed the applicant to appear before the court within 30 days. Thereafter, the applicant on 29.4.2012, had moved an application before the A.C.J.M.-IV, Mathura in Case Crime No. 46 of 2008, State of U.P. v. Yogesh, under Sections 407, 419, 420, 467, 468, 471 and 120B. I.P.C.. police station Refinery, District Mathura stating that the Investigating Officer wants to initiate proceeding under Sections 82 and 83, Cr. P.C. against the applicant as he has obtained a warrant from the court below and the fact is that the applicant has not committed any offence and he is the Director of M/s. Nand Lal Brothers (P.) Ltd. and neither he nor his company wants to dispose of any property and he is not an absconder. In the said application, it was further mentioned that the applicant wants to approach the High Court in the aforesaid case crime number and is preparing to challenge the F.I.R. of the said case before it for which the applicant has applied for certified copies of the documents of the aforesaid case which he has not received from the court below, hence he is not able to approach the High Court for the same. He further prayed that no coercive steps should be taken against him by the court below and he should be granted one month's time for surrendering in the court below. It is stated in the said application that in the case cognizance has

been taken and hence to initiate proceeding u/s 83, Cr. P.C. is not in the interest of justice as no offence is made out against him and further his arrest is not necessary in the case. Thus, by means of the said application, he prayed that no order should be passed against him u/s 83, Cr. P.C. and he may be granted one month's time to approach the High Court and he be permitted to file a copy of the High Court's order. The said application has been annexed as Annexure-7 on page 32 of the present application.

6. The aforesaid application dated 20.4.2012 of the applicant was rejected by the Judicial Magistrate. Mathura vide order dated 1.5.2012, stating therein that after perusal of the record, it is apparent that investigation against the applicant is still going on and the applicant has yet not appeared before the Investigating Officer nor appeared before the court below, hence there is no provision in the Cr. P.C. under which the applicant be granted time for approaching the High Court for challenging the F.I.R. Hence, the said application was dismissed by the learned Magistrate as the same was not found to be maintainable. A copy of the order dated 1.5.2012 passed by the Judicial Magistrate has been annexed as Annexure-8 at page 35 of the present application.

When the learned counsel for the applicant was pointed out by the Court about the fact that writ petition filed by the applicant before this Court praying for quashing of the F.I.R. of Case Crime No. 46 of 2008 and further praying for a direction to the police not to arrest the applicant against the directives as held by the Apex Court in Joginder Kumar's case and further praying to quash the non-bailable warrant as well as the proclamation issued u/s 82. Cr. P.C. as these orders were passed ignoring the view of Apex Court taken in Joginder Kumar's case, has already been rejected by this Court vide order dated 20.4.2011 and further when he had not challenged the said order before the Apex Court and the same has become final, it was not possible for this Court to pass any interim order staying the proceeding u/s 83. Cr. P.C. then the learned counsel for the applicant has stated that the court had power to stay the proceeding u/s 83. Cr. P.C. in view of the Apex Court's judgment passed in Joginder Kumar's case.

7. Learned counsel for the applicant was further questioned by the Court as to why there is non-disclosure of the fact by the applicant in the present 482, Cr. P.C. application about the dismissal of the earlier criminal writ petition of the applicant by this Court on 20.4.2011 for almost the similar relief which the applicant has also sought in the present 482, Cr. P.C. application, then he stated that the prayer made in the criminal writ petition filed by the petitioner was altogether different to the prayer made in the present application, hence he was not required to disclose the said fact and the applicant had not made any concealment of material fact from the Court.

8. Learned counsel for the applicant further argued that in view of Section 41B. Cr. P.C. the applicant could not be arrested by the police as there was no need for the arrest of the applicant by the police. The Investigating Officer has to follow the principles laid down by the Apex Court on Joginder Kumar's case and has to

assign the reasons for the arrest of the applicant.

9. It was further pointed out to the learned counsel for the applicant that the application which was moved by the applicant before the learned Magistrate on 29.4.2012 was misleading and also there is concealment of material fact to the effect as the applicant in the second paragraph of the said application, has categorically mentioned that the applicant is preparing to challenge the F.I.R. of the aforesaid case before the High Court for which he had applied for certified copy of the documents from the court below which have not been made available to him and he wants one month's time to approach the High Court, The same amounts to perjury and contempt of court as the writ petition filed by him challenging the F.I.R. of Case Crime No. 46 of 2008 for identical and similar other reliefs which is also subject-matter of present case, has already been dismissed by the High Court on 20.4.2011.

10. Learned counsel for the applicant has admitted that the application before the court below was not happily drafted and has prayed that the said averment should be ignored by this Court as the other prayer in the application before the learned Magistrate was for staying of the proceeding u/s 83, Cr. P.C. against the applicant as his arrest was not necessary.

11. Learned A.G.A. on the other hand had vehemently opposed the prayer made in the present 482, Cr. P.C. application for staying of process u/s 83, Cr. P.C. against the applicant and also for quashing the impugned order dated 1.5.2012 passed by the learned Magistrate as well as proclamation issued u/s 82, Cr. P.C. and a direction for holding the investigation fairly and impartially and has submitted that the applicant has yet not surrendered before the court below nor has appeared before the Investigation Officer. It is further submitted that the case pertains to the year 2008 and the investigation of the case is still pending and the applicant had not co-operated in the investigation, hence his arrest was necessary as prima facie cognizable offence is disclosed against him. It is further submitted that the writ petition filed by him was dismissed by this Court on 20.4.2011 in which he has prayed almost similar relief as has been sought in the present application and the order of this Court dated 20.4.2011 has also become final as the same has not been challenged by the applicant before the Apex Court, Hence, the present application should be dismissed with heavy costs for wasting the precious time of this Court.

12. Considering the submissions advanced by the learned counsel for the parties and from a perusal of the prayers made by the applicant in the present application as well as in the writ petition which have been quoted above, it is apparent that the applicant is trying to seek a relief from this Court for staying of any coercive action against him in pursuance of the impugned F.I.R. of Case Crime No. 46 of 2008 indirectly which he did not get directly as his prayer for staying arrest has already been refused by this Court earlier. It was not possible for this Court to stay the proceedings u/s 83, Cr. P.C. against the applicant after the dismissal of the criminal writ petition on 20.4.2011 which has also become

final in the event that the applicant has not challenged the same before the Apex Court, If he was aggrieved by the same. It is further submitted that all the submissions advanced by learned counsel for the applicant in the present application has already been considered and rejected by this Court in the writ petition filed by him as from the perusal of the averments made in the criminal writ petition as well as in the present 482. Cr. P.C. application are identical.

13. The present application u/s 482, Cr. P.C. is dismissed as the same lacks merit. Before parting, this Court expresses its displeasure and pain in which the present application u/s 482, Cr. P.C. was filed by the applicant who tried to mislead the learned Magistrate by moving a misleading application on 29.4.2012 requesting him to grant time for challenging the F.I.R. of the present case before the High Court though the same has already been dismissed a year ago on 20.4.2011 in the writ petition filed by the applicant and material concealment of fact about the dismissal of the writ petition filed by the applicant in the present 482, Cr. P.C. application who was also trying to mislead this Court to get an order in his favour. The conduct of the applicant as well as his counsel, who was also the counsel in the earlier writ petition, cannot be appreciated as neither the applicant himself has approached this Court with clean hands nor his counsel has advised him to do so. The applicant as well as his counsel should disclose each and every fact before the court below as well as before this Court which is expected from a counsel, who being an Officer of the Court has to assist the Court in a fair manner irrespective of the fact that he is holding brief of his client and, moreover the applicant, who is a litigant before this Court coming for seeking relief from this Court should approach the Court of law with all fairness. The Court hopes and trusts that the counsel as well as the applicant will not repeat such gestures or acts in future as by such advice and acts, not only compels the Court to take strict action against the guilty for perjury or drawing proceedings for contempt and further imposing costs for wasting the precious time of the Court which are overloaded with arrears of cases and large number of litigants are waiting for their cases to be heard by the court for seeking Justice.