
(2015) 07 AHC CK 0174

In the Allahabad High Court

Case No : Criminal Misc. Application No. 18788 of 2015

Rajni Jaiswal

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 10-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 202, 227, 228
Penal Code, 1860 (IPC) — Section 420, 504, 506

Citation : (2015) 3 ACR 3390 : (2015) 90 ALLCC 755

Hon'ble Judges : Vijay Lakshmi, J

Bench : Single Bench

Advocate : Sameer Jain, for the Appellant

Final Decision : Dismissed

Judgement

Vijay Lakshmi, J—Heard learned counsel for the applicant and learned AGA. The applicant by means of this application under section 482 Cr.P.C., has invoked the inherent jurisdiction of this Court praying for quashing the entire proceedings of Complaint Case No. 571 of 2013, Sadhna Chaubey v. Rajni Jaiswal, under sections 420, 504, 506 I.P.C. pending in the Court of A.C.J.M. 6th, Varanasi, as well as the summoning order dated 11.6.2013 passed in the aforesaid case.

2. Learned Counsel for the applicant has submitted that the application under section 156(3) Cr.P.C. moved by O.P. No. 2 was treated as a Complaint Case by the learned Magistrate, who after recording statements under sections 200 and 202 Cr.P.C. summoned the applicant vide order dated 11.6.2013. The applicant could not know about it and for the first time in May 2015 when local police visited her office then after enquiry the applicant knew about the pendency of aforesaid case and found that bailable warrant has been issued against her. It has been further submitted that whatever amount had been paid by O.P. No. 2, has already been returned by the applicant to her and thus no offence is made out against the applicant, therefore, proceedings of the Complaint Case may be quashed.

3. The record shows that the complainant and the witnesses have been examined under section 200 and 202 Cr.P.C. and they have supported the prosecution story.

4. The witnesses have clearly stated that out of the total amount only Rs. 2,70,000/- have been returned by applicant and a sum of about Rs. 5 Lacs is still due on her.

5. At the initial stage of summoning only prima-facie case is to be seen. Therefore, looking into the prima-facie evidence on record, it cannot be said that no offence is made out against the applicant. The legal position is well settled that if an offence is disclosed, the Court will not normally interfere.

6. So far as the inherent powers of the Court are concerned, it has been reiterated by Hon"ble Apex Court in a catena of judgments that while exercising its inherent powers under section 482 Cr.P.C., the Court would not embark upon a roving enquiry whether the allegations in the complaint are likely to be established by the evidence or not. The High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se; it has no jurisdiction to examine the correctness or otherwise of the allegations. (State of Bihar Vs. Murad Ali Khan and Others, AIR 1989 SC 1 : (1989) CriLJ 1005 : (1988) 3 Crimes 822 : (1998) 4 JT 124 : (1988) 2 SCALE 933 : (1988) 4 SCC 655 : (1988) 3 SCR 455 Supp .

7. From the perusal of the material on record and looking into the facts of the case, at this stage, it cannot be said that no offence is made out against the applicant. All the submissions made at the Bar relate to the disputed questions of fact, which cannot be adjudicated upon by this Court under section 482 Cr.P.C. At this stage, only prima facie case is to be seen in the light of the law laid down by Supreme Court in cases of R.P. Kapur Vs. The State of Punjab, AIR 1960 SC 866 : (1960) CriLJ 1239 : (1960) 3 SCR 388 , State of Haryana and others Vs. Ch. Bhajan Lal and others, AIR 1992 SC 604 : (1992) CriLJ 527 : (1990) 4 JT 650 : (1990) 2 SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp , State of Bihar and Another Vs. P.P. Sharma, IAS and Another, AIR 1991 SC 1260 : (1991) 2 CompLJ 197 : (1991) CriLJ 1438 : (1991) 2 Crimes 113 : (1991) 2 JT 147 : (1992) 1 SCC 222 Supp : (1991) 2 SCR 1 , and Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, AIR 2005 SC 9 : (2005) CriLJ 92 : (2004) 9 SCALE 177 : (2005) 1 SCC 122 , (para 10). The disputed defence of the accused cannot be considered at this stage. Moreover, the applicant has got a right of discharge under section 239 or 227/228 Cr.P.C. as the case may be through a proper application for the said purpose and she is free to take all the submissions in the said discharge application before the Trial Court.

8. Thus on the basis of the aforesaid discussions, the instant application appears to have no force and it is liable to be dismissed.

9. The application is, accordingly, dismissed. However, it is directed that in case

the applicant appears before the Court concerned within thirty days from today and applies for bail, the same shall be heard and disposed of expeditiously, if possible, on the same day by the Courts below in view of the settled law laid by the Seven Judges" decision of this Court in the case of Amarawati and Another (Smt.) Vs. State of U.P., (2005) 1 AWC 416 : (2005) CriLJ 755 : (2005) 1 UPLBEC 155 approved by Hon"ble Apex Court in Lal Kamendra Pratap Singh Vs. State of U.P. and Others, (2009) 7 JT 327 : (2009) 4 SCALE 77 : (2009) 4 SCC 437 : (2009) 4 SCR 1027 : (2009) 4 UJ 1588 .