
(2008) 09 AHC CK 0225
In the Allahabad High Court

Ram Babu Dixit, Suraj Singh, Prem Narayan and Ram Bharose APPELLANT
Vs
State of U.P. and Udal RESPONDENT

Date of Decision : 18-09-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 169, 172, 173
Penal Code, 1860 (IPC) — Section 177, 182, 195, 211

Citation : (2008) 09 AHC CK 0225

Hon'ble Judges : S.C. Nigam, J; Amar Saran, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amar Saran and S.C. Nigam, JJ.—Heard Sri Amit Daga, learned Counsel for the petitioners and the learned Additional Government Advocate. A Supplementary Affidavit has also been filed today annexing therein a copy of an application by the Investigating officer (I.O.) u/s 169 Cr.P.C.

2. This petition has been filed for quashing an F.I.R. dated 22.8.2008 in Case Crime No. 314 of 2008 under Sections 177, 195, 182 IPC and 3(2)(i)(ii) SC/ST Act at Police Station Lahchura, district Jhansi and for stay of the the arrest of the petitioners during the pendency of the writ petition.

3. The allegations in the F.I.R. in a nutshell were that the petitioner Ram Babu Dixit in collusion with the other petitioners had deliberately lodged a false first information report on 15.4.08, so that the informant In the impugned FIR Udal, S/o Tutti Chamar and his companion Ram Pratap could be falsely implicated in a murder case punishable with imprisonment for life. Udal had made this allegation in his FIR because he had been freed only after staying in jail from 21.4.08 to 3.6.08 after the new I.O. had submitted an application u/s 169 Cr.P.C. to the effect that Udal had been falsely implicated by the uncle of the deceased, the petitioner Ram Babu Dixit and others, and that in view of the insufficiency of evidence against him he may be released.

4. A perusal of the application u/s 169 Cr.P.C. shows that the conclusion of the I.O. regarding the innocence of the informant Udal and the falsity of the FIR against him and Ram Pratap by the petitioner Ram Babu Dixit and others is based on the 164 Cr.P.C. Statements of the father and mother of the deceased, Rajendra Dixit and Smt. Asha Rani Dixit, who have clearly stated that their son the deceased Mukesh had been murdered by his uncle Surendra and his sons Ranoo and Babbi Dixit and the involvement of the informant Udal was found false. We think that such allegations of implicating poor persons belonging to the Scheduled Caste for a murder of his own nephew Mukesh Dixit by the informant petitioner Ram Babu Dixit in collusion with the other petitioners to shield his other brother and nephews who have been nominated for this crime by the mother and father of the deceased Mukesh Dixit, and because of which the informant Udal even had to stay in jail from 21.4.08 to 3.6.08 are extremely grave.

5. Learned Counsel for the petitioners submits firstly, that as there was only an application u/s 169 Cr.P.C. by the I.O. and no judgement of acquittal of Udal and others in the murder case upto this stage, the FIR against him was premature.

6. We are not in agreement with this contention. As the 169 Cr.P.C. report of the Investigating Officer, was based on the statements u/s 164 Cr. P.C. of the mother and father of the deceased, Mukesh which show that Udal and his companion had falsely been Implicated in this murder case by the petitioner Ram Babu Dixit and other petitioners to save his other brother Surendra, and nephews, we see no difficulty in an F.I.R. being lodged against the said persons at this stage if in the view of the I.O. a prima facie case is disclosed showing the complicity of the petitioners in giving information to a., public servant (police officer) which they knew to be false, intending thereby to cause such public servant to do something to the injury of the informant, which meets the requirement of Section 182 IPC. There is no requirement in law that the FIR against the petitioners could only be lodged after the eventual acquittal of the informant and other co-accused in the murder case.

7. Secondly, it was argued by the petitioners" Counsel that u/s 195(1)(a)(i) Cr.P.C. there id a bar on the Criminal Courts taking cognizance of any offence punishable under Sections 172 - 188 (both inclusive) except on the complaint in writing of the public servant Concerned or of an administratively superior officer. It should be noted that the present case the stage of cognizance by any Criminal Court has not been reached when any question of bar u/s 195(1)(a) can be raised, and it is not at all attracted at the stage of investigation.

8. M. Narayan Das v. State of Karnataka AIR 2004 SC 555 and State of Punjab Vs. Raj Singh and Another, it has been Clearly laid down that there is no question of any embargo under 195 Cr.P.C. operating at the stage of investigation in a case. Moreover, in We present case, the offences alleged against the petitioners are also u/s 195 IPC and Section 3(2)(i)(ii) of the S.C./S.T. Act. We are also of the opinion that on the facts mentioned in the FIR prima facie offences u/s 211

IPC and under Sections 3(1)(viii) and (ix) are also disclosed. So far as offences under these Sections are concerned there is no question of any bar u/s 195(1)(a) (i) Cr.P.C. being attracted.

9. The learned Counsel for the petitioner however sought to contend that as only Information had been given to a public servant this was not a stage where evidence is given to attract Section 3(2)(i) or (ii) of the S.C. and ST. Act. It may be noted that the said provision not only speaks of giving evidence, but also of fabricating evidence, for Implicating a member of a Scheduled Caste in a capital offence, which would then attract a punishment of life imprisonment against the person who furnishes such evidence. We think that it needs to be considered whether by giving information to the police to set the criminal law in motion against an accused and also by producing persons to give statements u/s 161 Cr.P.C. before the police whether the ball has not been set rolling and step antecedents to giving false evidence, i.e. for fabricating false evidence when the case eventually reaches the Court have not yet been taken. An offence u/s 211 IPC in addition to Section 182 IPC is also committed when information is given to the police for the purpose by falsely charging a person with having committed an offence when the accused knows that there is no just ground for such a proceeding or charge, (Section 211 IPC is not one of the Sections to which the embargo u/s 195(1)(a)(i) Cr.P.C. applies even at the post cognizance stage so far as a public servant is concerned. Likewise the offence u/s 3(1)(ix) of the S.C. and S.T. Act, 1989 speaks of giving false Information to any public servant so that the said public servant can use his lawful powers for causing injury to a person of the Scheduled Caste. No bar u/s 195(1)(a)(i) Cr.P.C. is attracted so far as an offence u/s 3(1)(ix) is concerned.

11. Learned Counsel for the petitioners has cited the case of P.D. Lakhani and Anr. v. State of Punjab and Anr. (2008) 2 SCC 553. That is a case where the complaint made in Court by an unauthorised public servant was held to be not maintainable, as the public servant was not authorised to make the said complaint. As we have pointed out above, the said stage of the matter reaching Court has not reached in the present case. Hence the said case is clearly not applicable to the facts of the present case.

12. The next argument raised by the learned Counsel for the petitioner was that such a report could only be lodged by the Investigating Officer and not by the aggrieved person, who was sent to jail because such F.I.Rs. are only to be lodged by a public servant u/s 195(1)(a) of the Code of the Criminal Procedure. We think this is a repetition of an earlier argument, and it has already been answered in our observations above that the bar of Section 195 Cr.P.C. does not apply at the stage of investigations. Also as pointed out above that the other Sections under the S.C./ST. Act and the penal code indicated, above do not fall under the embargo of Section 195(1)(a)(i) Cr.P.C. We think if a Scheduled Caste person can never be restrained from lodging an FIR complaining that an accused has gone to the police for falsely implicating him in an offence of murder,

because of which he has spent a long period in jail.

13. For all these reasons we find no force in the writ petition. It is summarily rejected.

14. The observations made herein above have only been made for the purpose of replying to the contentions raised by the petitioners' counsel and for disposal of this writ petition. They should not affect the independent exercise of discretion by the Investigating Officer or subsequently the Court, which takes cognizance or tries this case.