
(2011) 06 AHC CK 0150
In the Allahabad High Court

Sarver Alias Pahelwan and Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 29-06-2011

Acts Referred:

Citation : (2011) 06 AHC CK 0150

Hon'ble Judges : Sheo Kumar Singh, J and Naheed Ara Moonis, J

Final Decision : Dismissed

Judgement

Sheo Kumar Singh and Naheed Ara Moonis, JJ.

1. Heard learned counsel for the petitioner and learned A.G.A.

Prayer in this petition is for quashing the F.I.R. lodged at Case Crime No. 133 of 2011 under Sections 147, 148, 149, 302, 307, 332, 353, 427 I.P.C. and 7 Criminal Law Amendment Act, Police Station Pilakhua, District Ghaziabad and not to arrest the petitioners during investigation.

2. There is a third prayer that investigation be transferred from local police to Central Bureau of Investigation in respect to the aforesaid offence.

3. So far the relief nos. 1 and 2 are concerned the Full Bench of this Court in Ajit Singh @ Muraha Vs. State of u.P. and others (2006 (56) ACC 433) reiterated the view taken by the earlier Full Bench in Satya Pal V. State of u.P. and others (2000 Cr. L. J. 569) that there can be no interference with the investigation or order staying arrest unless cognizable offence is not exfacie discernible from the allegations contained in the first information report or there is any statutory restriction operating on the power of the police to investigate a case.

4. 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 is not to be done indirectly.

5. Learned counsel for the petitioner has not brought forth anything cogent or convincing to manifest that no cognizable offence is disclosed prima facie on the allegations contained in the first information or that there was any statutory restriction operating on the police to investigate the case.

6. Having scanned the allegations contained in the first information report the Court is of the view that the allegations in the first information report do disclose commission of cognizable offence and, therefore, no ground is made out warranting interference by this Court.

7. So far prayer in respect to transfer of investigation is concerned petitioners are the accused we may refer to the decision given in case of Central Bureau of Investigation Vs. Rajesh Gandhi reported in 1997 Cr.L.J., 63 and we can say that the petitioners have no right to make this request and that too at preliminary stage.

8. In view of the aforesaid, we are not satisfied that any ground has been made out directing transfer of the investigation from local police to Central Bureau of Investigation.

9. The cases cited by the learned counsel for the petitioner have no application to the facts of the present case and therefore, no relief in this respect also can be given.

10. Writ petition accordingly fails and it is dismissed.