
(2009) 05 AHC CK 0867

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 7286 of 2009

Satya Pal Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 15-05-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 107, 108, 306
Prevention of Corruption Act, 1988 — Section 7

Citation : (2009) 2 ACR 2169

Hon'ble Judges : Ravindra Singh, J;Naheed Ara Moonis, J

Bench : Division Bench

Advocate : G.S. Chaturvedi and Samit Gopal, for the Appellant; Satish Trivedi, Daya Shanker Mishra, Sharique Ahmed, Parvez Alam and Suresh Singh Yadav and A.G.A., for the Respondent

Judgement

Ravindra Singh, J.—This petition has been filed by the Petitioner Satya Pal Singh with a prayer to issue a writ, order or direction in the nature of certiorari quashing the impugned first information report dated 4.4.2009 and subsequent and consequential proceedings drawn against the Petitioners in Case Crime No. 148 of 2009 u/s 306, I.P.C. and Section 7 of the Prevention of Corruption Act, 1988, Police Station Kareilly, district Allahabad, to issue a writ, order or direction in the nature of mandamus commanding and directing the Respondents not to arrest the Petitioner in Case Crime No. 148 of 2009 u/s 306, I.P.C. and Section 7 of the Prevention of Corruption Act, 1988 Police Station Kareilly, district Allahabad and to issue a suitable writ, order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

2. The facts in brief of this case are that the F.I.R. has been lodged by Sub-Inspector Saman Singh at P. S. Kareilly, district Allahabad on 4.4.2009 at 4.35 p.m. in respect of the alleged incident dated 4.4.2009 which had occurred at unknown time, the F.I.R. has been lodged in Case Crime No. 148 of 2009 u/s

306, I.P.C. but subsequently Section 7 of the Prevention of Corruption Act, 1988 has also been added. It is alleged in the F.I.R. that one Sri Sayyed Masood Hussain informed the Police Station, Kareilly on 4.4.2009 vide Nakal Rapat No. 22 at 12.10 O'clock that deceased Sayyed Gayas Ahmed alias Ghosh had committed suicide by way of hanging inside the room of the first floor of his house, on that information Sub-Inspector Saman Singh came at the place of occurrence and saw the dead body inside the room in hanging condition and initiated the proceedings of inquest at 13.25 O'clock. He called the private photographer from the market who did the photography of the dead body from different angles, thereafter the dead body was taken down and it was kept outside the room and did the inspection of the dead body, during inspection one suicide note was recovered from pant's pocket of the deceased in which it was written by the deceased that he was serving in P.C.F. department, its M.D., A.M.D. and G.M. (Administration) had realized the amount of Rs. 48,000 from the month of September, he was receiving the calls from the headquarters for providing more money but he was not able to arrange such money from anywhere, he was disappointed due to rampant corruption of P.C.F. and he was compelled to commit suicide, his last desire was that if any money was accountable from P.C.F. department the same may be given to his younger brother Sayyed Mohd. Safiyan. It was found that the deceased was posted in P.C.F. department at Mahoba at the post of Assistant Manager who had come to his house on 3.4.2009, thereafter the writing of the suicide note was identified by his family members. The first informant draw the conclusion that the deceased had committed suicide only because he could not fulfil the illegal demand of paying money to M.D., A.M.D. and G.M. (Administration) for which he was threatened for spoiling his service career and putting him on suspension.

3. Being aggrieved from the F.I.R. lodged against the M.D., A.M.D. and G.M. (Administration) of P.C.F. department the Petitioner being General Manager of P.C.F. department this writ petition has been filed with a prayer to quash the F.I.R.

4. Heard Sri G. S. Chaturvedi, senior advocate assisted by Sri Samit Gopal, learned Counsel for the Petitioner, learned A.G.A., for the State of U. P. and Sri Satish Trivedi, senior advocate assisted by Sri Daya Shanker Mishra and Sarique Ahmad, Sri Parvez Alam and Sri Suresh Singh Yadav learned Counsel for the first informant:

1. It is contended by learned Counsel for the Petitioner that it is a pure case of suicide, it has been committed by the deceased but only on the basis of the suicide note the Petitioner has been falsely implicated in the present case. The story of the suicide is fully corroborated by the post mortem examination report. There is no specific allegation against the Petitioner. There is general allegation that M.D., A.M.D. and G.M. (Administration) of P.C.F. department have taken the amount of Rs. 48,000 from the deceased from in the month of September and the deceased was receiving the calls from Head Quarter paying the money.

2. That the Petitioner is not named in the F.I.R. and no specific allegation has

been made against the Petitioner regarding any demand of money or giving any telephonic call to the deceased demand in money etc., or extending threat, it is alleged in the F.I.R. that the deceased has committed suicide on account of corruption spread in P.C.F. department because he was not in a position to provide money which shows that the deceased himself was frustrated on account of some other reason consequently he committed suicide.

3. It is contended that even on the basis of allegation made in the F.I.R. no offence u/s 306, I.P.C. is made out because there is no allegation to show that the deceased was abetted by the Petitioner to commit suicide or the deceased was compelled by the Petitioner to commit suicide or he was put at such a situation having no other alternative except to commit suicide.

The wording of Section 306, I.P.C. is as under: "If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

For constitution of offence u/s 306, I.P.C., the abetment is necessary ingredient.

The abetment is defined in Section 107 of the Indian Penal Code which read as under:

107. Abetment of a thing.-A person abets the doing of a thing, who- First. - Instigates any person to do that thing ; or Secondly.-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing ; or Thirdly. - Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.-A person who by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing. Explanation 2. - Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

4. That in the present case no instigation was made by the Petitioner and there is no allegation of his engagement with one or more than one person in any conspiracy for doing that thing.

5. That in such a situation no offence u/s 306, I.P.C. is made out. The Petitioner is having high office in P.C.F. department but the police is intending to make his arrest only because he is having the office of General Manager.

6. That in the present case only on the basis of suicide note, the Petitioner has been implicated. In the present case, genuineness of the suicide note is highly disputed. In case, the Petitioner is arrested and sent to jail, he shall suffer

irreparable loss, therefore, the F.I.R. and its investigation may be quashed.

5. In reply to the above contention, it is submitted by the learned A.G.A. and the learned Counsel for the Respondent that the Petitioner was a young honest officer, he has been made the victim of corruption spread in P.C.F. department, he was compelled by the Petitioner to pay the money continuously as illegal gratification, he had already paid the amount of Rs. 48,000 even then he was asked to pay some more money, being honest officer it was not possible for him to fulfil the illegal demand of the Petitioner and the threat was also extended to him by the Petitioner and other to spoil his career and to put him under suspension due to which he was too much disturbed, it is a case in which the deceased has been made the victim of corruption spread in P.C.F. department. The deceased was compelled by the Petitioner and others to commit suicide though there is no direct instigation for committing the suicide but the circumstances were sufficient for compelling the deceased to commit suicide which comes in the definition of Section 107, I.P.C.

6. It is further submitted that according to the averments in the F.I.R. the offence of corruption is also clearly made out, though it was not added in the F.I.R. but subsequently, it has been added, it is also a cognizable offence and there is no ground of mala fide. The allegations made in the F.I.R. are prima facie constituting the offence u/s 306, I.P.C. and Section 7 of Prevention of Corruption Act, which are cognizable, lodging of the F.I.R. was not barred by any law and there is no ground for quashing the F.I.R., the petition is devoid of merit and the same may be dismissed.

7. Considering the submission made by the learned Counsel for the Petitioner and the learned A.G.A. and from the perusal of the F.I.R. it appears that the deceased was a young officer serving in P.C.F. department of U. P., he has committed suicide, from his pant's pocket a suicide note was recovered, which shows that M.D./A.M.D./G.M. (Administration) of P.C.F. department had taken amount of Rs. 48,000 from him as illegal gratification and he was receiving telephonic message from the headquarters for providing more money for which he was not in a position to arrange. He was receiving threatening calls to fulfil the aforesaid illegal demand in default he would be put under suspension by making adverse entry in his character roll due to which he committed suicide though there was no direct instigation by any person to commit suicide but such a situation was created before an honest officer (deceased) either to provide money to the Petitioner by involving himself in the corruption or to face suspension from his service, the deceased was not having any source to fulfil the demand of corrupt higher officer in such a situation he chose to commit suicide and not to lead a disgraceful life of suspension with an adverse remark in his character roll, even according to the definition of abetment as provided u/s 107, I.P.C. when a person is said to instigate another person when he actively suggests or stimulates him to the act by any means or language, direct or indirect whether it takes the form of express solicitation or hint or insinuation or

encouragement it is not necessary that the express words should be used to indicate what should be done by the person to whom the direction are given. The provisions of Section 107, I.P.C. are applicable in the present case. The word abettor is defined in Section 108, I.P.C. which reads as under:

A person abets offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1 shows that the abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

8. The averments in the F.I.R. clearly shows an offence which are constituting an offence punishable u/s 306 I.P.C. and the offence punishable u/s 7 of the Prevention of Corruption Act, which are cognizable offence, the Petitioner is named in the F.I.R. by his office, the F.I.R. is not an encyclopaedia and there is no ground of mala fide for lodging the F.I.R. against the Petitioner, the lodging of the F.I.R. is not barred by any provisions of law, there is no other ground for quashing the F.I.R. and its investigation. Therefore, we are of the opinion that the petition is devoid of merits. The prayer for quashing the F.I.R. and its investigation for staying the arrest of the Petitioner during investigation is refused.

9. However, considering the facts, it is directed that in case Petitioner appears before the Court concerned within 30 days from today and applies for bail, the same shall be heard and disposed of in view of Amarawati and Another (Smt.) Vs. State of U.P.,

The Full Bench of this Court has held in the aforementioned cases: 1. Even if a cognizable offence is disclosed in the F.I.R. or complaint the arrest of the accused is not a must, rather the police officer should be guided by the decision of the Supreme Court in Joginder Kumar Vs. State of U.P. and others, before deciding whether to make an arrest or not.

2. The High Court should ordinarily not direct any Subordinate Court to decide the bail application the same day, as that would be interfering with the judicial discretion of the Court hearing the bail application. However, as stated above, when the bail application is u/s 437, Cr. P.C. ordinarily the Magistrate should himself decide the bail application the same day, and if he decides in a rare and exceptional case not to decide it on the same day, he must record his reasons in writing. As regards the application u/s 439, Cr. P.C., it is in the discretion of the learned Sessions Judge, considering the facts and circumstances whether to decide the bail application the same day or not, and it is also in his discretion to grant interim bail the same day subject to the final decision on the bail application later.

The above view has been approved by the Hon''ble Apex Court in Lal Kamlendra Pratap Singh v. State of U. P., on 23.3.2009, Criminal Appeal No. 538 of 2009, 2009 (2) Supreme 600.

With this direction, this petition is finally disposed.