
(1985) 03 AHC CK 0072

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 3636 of 1984

Smt. Manjoo Srivastava and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 28-03-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 82, 83

Citation : (1985) ACR 361

Hon'ble Judges : M. Wahajuddin, J

Bench : Single Bench

Advocate : C.P. Misra, for the Appellant; Sochendra Mohan, for the Respondent

Final Decision : Allowed

Judgement

M. Wahajuddin, J.—The applicants have come forward with a prayer that the complaint dated 5-9-79 against the applicants be quashed as the complaint itself does not disclose any offence as regards the present applicants. I have considered the affidavit, counter affidavit, rejoinder affidavit and also annexures, including the complaint. It would appear that the complaint has been lodged against the present applicants and two more persons, namely, Naibadeshwar Prasad Sinha and Kameshwar Prashad Sinha. Applicants Nos. 1 and 2 are daughters of Narbadeshwar Prasad Sinha, applicant No. 3 is the wife of Narbadeshwar Prasad Sinha while applicants Nos. 4 and 5 are sons of Narbadeshwar Prasad Sinha. Applicant No. 6 is the nephew of Narbadeshwar Prasad Sinha. A perusal of the complaint would show that the entire allegations are directed against Narbadeshwar Prasad Sinha and Kameshwar Prasad Sinha. The acts constituting any offence have also been exclusively attributed to them. The complaint does not disclose any offence whatsoever even prima facie to have been committed by the applicants. The administration of justice and in particular, prosecution for any penal offence should not be debased into a prosecution. The law very much deplores it. The case of R.P. Kapur Vs. The State of Punjab, lays down the various grounds on which the Court should exercise its inherent powers

and interfere. One of the grounds laid down is where the very complaint does not disclose any case against any person. It has gone to the extent of even saying that if evidence is patently absurd which would not be believed can also constitute a ground for quashing the proceeding. In other subsequent pronouncements of Hon''ble Supreme Court not only reliance has been placed upon this leading case of R.P. Kapur (supra) and the principles laid down therein have been reiterated but rather later pronouncement have mentioned that there may be some other grounds also justifying interference. In this case I have now to consider whether the complaint itself is such that no case whatsoever against the present applicants is disclosed and I am fully satisfied that it is so.

2. It was urged that the case lingered on for about four years because the present applicants did not cooperate with the Magistrate and absented themselves on innumerable dates and even a resort to proceeding u/s 82 and 83 Code of Criminal Procedure had to be made. This would not justify the hanging on of the prosecution against the applicants when the complaint itself does not disclose commission of any offence by them, rather it will be a harassment of the very applicants that the damocles'' sword has kept hanging over their head for such a long period while they should not have even been summoned in the face of the complaint. True that there is positive and categorical allegation against Kameshwar and Narbadeshwar but they do not figure as applicants and naturally the complaint will proceed against them when a prima facie case is disclosed against them, without being affected by quashing of the complaint against the others, namely, the applicants but so far as the applicants are concerned why should they be harassed to face the criminal trial when the complaint itself, which is the foundation of the case, does not disclose any case against the applicants. Their mere presence in their house or in the room would not render them guilty. Obviously the ladies and the other inmates of the house would be in the house and simply because any other inmates of the house commit offence others would not become guilty or a party to it.

3. The next argument urged was that trial is at an advanced stage and the pleas that are being raised could be raised before the trial Court itself. Reliance in support of such argument is placed upon the case of Amar Chand Agarwalla Vs. Shanti Bose and Another, etc., . This ruling does not help the opposite parties at all. From the uncontroverted averments in the affidavit it would be found that so far even charge has not been framed. What has been observed in the Supreme Court case is that the aggrieved person should come to the Court for any quashing at the earliest at least immediately after the framing of the charge. In the present case even charge has not been framed so if the Court finds that no case is disclosed against the applicants on the face of the complaint itself it will not hesitate to quash the proceedings against the applicants.

4. In the result, the application of the present six applicants is allowed and the entire criminal proceedings in case No. 1096/1983 pending in the Court of IV Addl. Munsif Magistrate, Varanasi, including the complaint dated 5-9-1979 so far

as it is directed against the applicants is quashed. I may for the sake of clarity also observe that the complaint case shall proceed against Kameshwar Prasad Sinha and Narbadeshwar Prasad Sinha, and the disposal of the case be expedited.

Application allowed.