

(2006) 05 AHC CK 0023

In the Allahabad High Court

Case No : Criminal M. Recall Application No. 491 of 2006 in Criminal M.W.P. No. 12376 of 2005

Smt. Rajdulari Gupta and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-05-2006

Acts Referred:

Constitution of India, 1950 — Article 215
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2006) 3 ACR 3479

Hon'ble Judges : Shiv Shanker, J; Amitava Lala, J

Bench : Division Bench

Advocate : Raja Singh, for the Appellant; Amit Daga and N.K. Verma, A.G.A., for the Respondent

Judgement

Amitava Lala, J.—A writ petition was filed before this Court on 6.12.2005, praying inter alia as follows :

(i) Issue a writ, order or direction in the nature of certiorari to quashing the impugned F.I.R. in Case Crime No. 320/2005, under Sections 406 and 420, I.P.C. Police Station Quarsi, district Aligarh (Annexure-1).

(ii) Issue a writ, order or direction in the nature of mandamus commanding the Respondents not to arrest the Petitioner in Case Crime No. 320/2005, under Sections 406 and 420, I.P.C., Police Station Quarsi, district Aligarh.

(iii) Issue any other suitable writ, order or direction, as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

(iv) Award the costs of the writ petition to the Petitioners.

2. The first paragraph of the writ petition is as follows :

That this is the first writ petition on behalf of the Petitioners before this Hon'ble Court and no other writ petition has ever been filed or pending before this

Hon"ble Court for same cause of action.

3. Since this Court was convinced that the dispute is quasi civil in nature, the following order was passed on 8.12.2005.

Dispute appears to be quasi civil in nature. Upon hearing the learned Counsel appearing for the parties, we direct the Investigating Officer to complete the investigation of Case Crime No. 320 of 2005, under Sections 406 and 420, I.P.C., P.S. Quarsi, district Aligarh within a period of three months from the date, on which a certified copy of this order is presented before him. The Petitioners are directed to co-operate with the Investigating Officer in all possible manner. If the Investigating Officer or informant found himself aggrieved due to falsification, misstatement, fraud, non-cooperation with the Investigating Officer or any other reasons whatsoever relevant for the purpose, they are at liberty to apply for recalling/variation/ vacating/modification of the order. However, the Petitioners will not be arrested in the aforesaid case crime number till the submission of charge-sheet, if any. Accordingly, the writ petition stands disposed of. However, no order is passed as to costs.

4. However, in the order the relevant part is that if there is any falsification, misstatement, fraud etc., and if it brought to the notice of the Court, the order will be recalled, varied or modified. After passing this order the Respondent No. 4 filed an application stating that upon suppression of material fact that in respect of self same F.I.R. the Petitioners had already proceeded with a writ petition earlier. The earlier writ petition being Criminal Misc. Writ Petition No. 6488 of 2005, Sushil Kumar Gupta and Anr. v. State of U. P. and Ors., was disposed of on 14.9.2005. It appears to us that after the expiry of four weeks stay of the earlier order, when period was over the present writ petition was filed. It is a tactical ploy on the part of the litigants with the Court, hence it is to be treated as fraud upon the Court. Initially the Court was pleased to grant stay of operation of such order at the instance of applicant/Respondent No. 4 herein and directed to issue a notice upon the writ Petitioners. Sri Raja Singh, learned Counsel appearing for the Petitioners contended before this Court that litigants themselves suppressed such facts of following the earlier writ petition with him as a result he proceeded accordingly. Since he has no such role to play to call upon the Court, he can be excused otherwise the matter would be forwarded to the appropriate Bar Council. However, the litigants cannot be excused. We have carefully considered the position of law in this respect. The Court is empowered to take judicial notice and to pass appropriate order in view of Article 215 of the Constitution of India. It is in fact a criminal contempt interfering or obstructing with the administration of justice. In a judgment in Afzal and another Vs. State of Haryana and others, it has been held that if a false or a misleading or a wrong statement deliberately and wilfully made by a party to the proceedings to obtain a favourable order would prejudice or interfere with the due course of judicial proceedings and thus amounts to contempt of court. A similar principle has also been taken in Government of Government of A.P. and another Vs. G. Lakshman Reddy and

another, However, the same is established to take a prima facie view.

5. Therefore at the first phase the application for recalling stands disposed of accordingly by recalling the order passed earlier on 8.12.2005.

6. In the second phase the writ petition is to be treated as day's list by the consent of the parties and dismissed upon payment of cost as assessed Rs. 1,700 to be paid to the Respondent No. 4/applicant herein.

7. In the third phase Court issues a notice upon the Petitioners to be personally present before this Court on 12.7.2006 as against the show cause to explain the position why they should not be sent to civil prison or be otherwise dealt with.

8. The Registrar General is directed to inform the appropriate police authority to make necessary arrangement of police outside the Court on the date of hearing to give effect the order, if the situation arises.