(2006) 05 AHC CK 0105

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition No. 1430 of 2006

Sri Jagan Nath — APPELLANT

Vs

State of U.P. and Narain Prasad Verma — RESPONDENT

Date of Decision : 15-05-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 82, 83
Penal Code, 1860 (IPC) — Section 120

Citation : (2006) 9 ADJ 272

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

Bench : Division Bench

Advocate : K.K. Arora, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Amitava Lala, J.—The complainant case as per First Information Report (hereinafter called as F.I.R.) lodged at Crime No. 265 of 1999 under Sections 406, 420, 467, 468, 471, 120B Indian Panel Code (hereinafter called as IPC) Police Station Kotwali, District Mathura is as follows:

2. On 7th April, 1999 a F.I.R. was lodged at police station Kotwali, District Mathura based inter alia on the averments that on 23rd October, 1997 one Sri Brijesh Agnihotri and Sri Umesh Verma contacted father of the first informant and informed him about the company namely Oasis Plantation Limited and asked him to make investment with the company at least Rs. 4000/-from him and further informed that he will have a Fixed Deposit in lieu thereof and his son Narain, respondent No. 3 will be taken in service of the company aforesaid. On 24th October, 1997 the respondent No. 3 met with Sri Azim Khan, Regional Manager of the company at Aligarh and on 25th October, 1997 lie met with Sri Satya Prakash Sharma, General Manager of the company regarding scheme. The respondent No. 3 felt satisfied and assumed the; charge of Marketing Executive on a monthly remuneration of Rs. 2,2507- and gave him a target of Rs.

60,000/-. It was further stated that the first informant collected a sum of Rs. 59,800/- and gave it to Sri Azim Khan on 8th November, 1997 in presence of other accused persons of which a receipt was given him on 8th November, 1997 by one Sri Brijesh Agnihotri. On this the first informant, respondent No. 3 was appointed as Branch Manager of the Agra Branch and was given an appointment letter. Accused persons named in the F.I.R. namely S/Sri Brijesh Agnihotri, Umesh Verma, Satya Prakash Sharma informed him about the other schemes of the company. At this stage the salary of the first informant, respondent No. 3 was increased to Rs. 4,500/- and was also given traveling allowance of Rs,2,000/- per month. On 9th November, 1997 a branch of the company was opened at Kosikalan, Mathura and on 5th December, 1997 another branch was opened at Maholi Road.

3. It has further been stated in the impugned F.I.R. that the first informant, respondent No. 3 collected a total sum of Rs. 1,76,3407- for the purpose of making a Fixed Deposit (hereinafter called as FD), Recurring Deposit (hereinafter called as RD), Demand Draft (hereinafter called as DD) and out of the aforesaid amount after making necessary deductions made payment of balance amount of Rs. 66,3007- to Sri Azim Khan on 12th December, 1997, Thereafter on various occasions papers relating to making of FDs, RDs and DDs were demanded from the company and various phone calls were made in this regard and information were also sent. On various occasions Sri Azim Khan and Sri Satya Prakash Sharma kept on delaying the matter of payment of salaries of the members of the staff. The time of repayment was also approaching fast and therefore, demands were being made in this regard. However, notwithstanding various efforts nothing was done in the matter. Thereafter first informant, respondent No. 3 contacted the Security and Exchange Board of India (hereinafter called as SEBI) and sought information about the position of the company namely Oasis Plantation Limited and was informed that the Board of Directors of the Company aforesaid comprised of (1) Sri Om Praksh Verma (2) Sri Azim Khan and (3) Sri Jagan Nath. All the three persons aforesaid are alleged to have cheated the public by misappropriating their money. It was further stated that their office at Mathura is/are lying closed and on contacting them time and again no satisfactory reply was given.

4. It has further been stated that information in this regard was initially given to the Central Bureau of Investigation, New Delhi on 17th June, 1998. However, the matter was transferred for investigation to the local police at Mathura which registered F.I.R. at Police Station Kotwali, District Mathura at crime No. 265 of 1999 for an offence under Sections 406, 420, 467, 468, 471 and 120B, I.P.C.

5. There is no doubt that crime case was filed in the year 1999, about 6 years and 221 days before filing of the present writ petition. Therefore there is enormous delay in making this writ petition. The petitioner contended that he is resident of district Navashahar (State of Punjab). At no point of time any Investigating Officer or any body else ever approached him for the purpose of

investigation or arrest. No proceeding under Sections 82/83 Cr.P.C. was ever drawn. For the first time on 11th January, 2006 a constable approached the petitioner and informed him about the impugned F.I.R. The writ petition was filed on 2nd February, 2006. The petitioner is aged about 67 years and a chronic heart patient. He is also suffering from angina pectoris and chest pain. Therefore, he has been advised to avoid long journey and not to take much stress. Doctor''s certificate is annexed. He is in apprehension of arrest in violation of fundamental right of Article 14 and 21 of the Constitution of India. Therefore he made a following prayer,

Issue a writ, order or direction in the nature of mandamus directing the respondents not investigate the matter in crime No. 265 of 1999, under Sections 406, 420, 467, 468, 471, 120B, IPC, Police Station Kotwali, District Mathura or cause arrest of the petitioner in furtherance thereof.

He has also prayed for interim order, which is as follows:

Issue a writ, order or direction in the nature of certiorari quashing the impugned first information report lodged at crime No. 265 of 1999, under Sections 406, 420, 467, 468, 471, 120B, IPC, Police Station Kotwali, District Mathura;

Issue any other writ, order or direction, which this Hon''ble Court may deem fit and proper in the circumstances of the case; Award costs of the petition to the petitioner.

6. Section 406 of the I.P.C. is made for punishment for criminal breach of trust wherein Section 420 is made for cheating and dishonestly inducing delivery of property. Sections 467, 468 and 471 are in respect of forgery, Section 120B is made for punishment of criminal conspiracy. Although there is a difference between Sections 406, 409 in one hand and Section 420 on the other hand, the court under this jurisdiction will find out as to whether the prima facie case has been made out in the F.I.R. or not. The allegation in the F.I.R. is that a technique has been adopted by the accused to defraud the people at large which is as good as scam.

7. According to us the petitioner cannot avoid his laibility by saying that there is no specific allegation against him. It is to be remembered FJ.R. is a tip of the ice berg. Following the F.I.R., if investigation is carried on and various materials may come out. The petitioner cannot avoid his liability being a Director of the Company. We have to take into account the common object and/or common intention for the purpose of establishing a common cause. A Company is a collective person. A Director is head of the Company. When there is a prima facie case even if the same is common, we can not avoid the same only on the probabilities. Due to non applicability of the provision of anticipatory bail within the State affected persons want to apply under the writ jurisdiction with the support of State of Haryana and others Vs. Ch. Bhajan Lal and others, along with prayer for stay of arrest. But we should not be forgetful that in spite of giving various guidelines court held therein that power under Article 226 of the

Constitution of India or Section 482 of the Code of Criminal Procedure should be exercised sparingly that too in the rarest of the rare cases. It is well settled proposition that when final order could not be passed the interim order would not unnecessarily be passed. Therefore, no question of stay of arrest arisen. In 2004 SCC 353 (State of M.P. v. Awadh Kishore Gupta and Ors.) even in dealing with an application u/s 482 of the Criminal Procedure Code the court held that it is not proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether the conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It is erroneous to assess the material before it and concluded that the complaint cannot be proceeded with.

8. Against these background we are not convinced to pass any affirmative order in favour of the petitioner. Moreover as regard point of delay in making the writ petition is concerned, a general statement has been made that only on 11th January, 2006 a constable approached the petitioner in respect of filing of the F.I.R. Is it believable after a lapse of 6 years 221 days on 7lh April 1999. Assuming such statement is correct, there is no explanation whatsoever as to why the writ petition was filed on 2nd February, 2006 when alleged information was received on 11th January, 2006 about a month back. Therefore, neither we can ignore the delay nor the merit.

9. Hence in totality we cannot pass any affirmative order in this writ petition. Therefore, the writ petition stands dismissed. No order is passed as to costs.

10. However, this order will not prevent the petitioner to apply for bail before the appropriate court and if the same is made the court will decide in accordance with law.