
(2011) 10 AHC CK 0116
In the Allahabad High Court
Case No : Misc. Bench No. - 9588 of 2011

Sunil Kumar Awasthi

APPELLANT

Vs

The State Of U.P. and Others

RESPONDENT

Date of Decision : 21-10-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 32
Penal Code, 1860 (IPC) — Section 363, 366

Citation : (2011) 10 AHC CK 0116

Hon'ble Judges : S.C. Chaurasia, J;Rajiv Sharma, J

Bench : Division Bench

Judgement

1. Rejoinder affidavit filed on behalf of opposite party No.3 is taken on record.
2. In writ petition Nos. 9588 of 2011 (MB) and 10339 of 2011 (MB), the petitioner has prayed for quashing the First Information Report dated 13.9.2011, relating to Case Crime No. 1891 of 2011, under Sections 363/366 I.P.C., Police Station Mohammadi, District Lakhimpur Kheri, whereas in writ petition No. 10269 of 2011, petitioner-Sri Niwas, who happened to be the complainant of the above case crime number, has prayed for issuance of writ in the nature of Mandamus directing the opposite party No.3-Superintendent of Police, Lakhimpur Kheri, to arrest accused respondent Nos. 4 to 6, namely, Kapoorey alias Shyam Sunder, Badakkey alias Krishna Kumar and Basudev in pursuance to the above First Information Report.
3. With the consent of learned Counsel for the parties, all the writ petitions are taken up together and are decided by a common order.
4. Heard Sri R. Agnihotri and Sri D. Trivedi, learned Counsel for the petitioner and learned Additional Government Advocate and Sri A.K. Singh Somvanshi, learned Counsel for the complainant.
5. In writ petition No.9588 of 2011 (MB), it has been stated that he had entered into matrimonial bond with Km. Nilam Devi, daughter of complainant, as she was

major at the time of incident. He has also annexed a copy of the Transfer Certificate dated 20.7.2006 as contained in Annexure No. 2 to the writ petition to prove the majority of prosecutrix. This Court, vide order dated 27.9.2011, issued notice to the respondent/complainant, restrained the opposite parties from harassing/interfering in the matrimonial life of the petitioners in view of the law laid down by the Apex Court rendered in the case of Lata Singh v. State of U.P. and another 2006 (5) ALJ 357. Subsequently, complainant of the Case Crime No.1891 of 2011, instead of tendering the reply to the notice so issued in writ petition No. 9588 of 2011 (MB), has filed another writ petition No. 10269 of 2011 (MB), stating therein that her daughter Km. Nilam Devi was minor at the time of incident as per the High School Marksheet. In support of his submission, he has annexed the copy of the High School Marksheet as Annexure No. 2 to the writ petition. Immediately thereafter, another writ petition, bearing No. 10339 of 2011 (MB), has been filed by co-accused of Crime No. 1891 of 2011, namely, Kapoore alias Shyam Sunder and Badakkey alias Krishna Kumar, claiming parity with the order dated 27.9.2011.

6. All these writ petitions were taken up togetherwith and in order to verify the controversy as to whether Transfer Certificate dated 20.7.2006, which has been annexed by the accused persons/petitioners as Annexure No. 2 to the writ petition, is genuine or High School Certificate, which has been annexed as Annexure No. 2 to the writ petition, this Court, vide order dated 19.10.2011, directed petitioners Sunil Kumar Awasthi, Kapoore alias Shyam Sunder, Badakkey alias Krishna Kumar to appear in person along with original Transfer Certificate as contained in Annexure No. 2 to the writ petition. Simultaneously, complainant-Sri Niwas was also directed to appear in person along with original High School Mark-Sheet.

7. In compliance of the order dated 19.10.2011, petitioners have produced duplicate original copy of Leaving Certificate dated 19.10.2011 and Junior High School Marksheet-2007 and on the other, complainant has produced the original High School Marksheet. Both petitioners as well as complainant are also present in person.

8. Learned Counsel for the petitioners submits that original of Transfer Certificate (Annexure No.2 to the writ petition) is not available with him but instead they have produced the copies of Leaving Certificate issued by the Principal, Primary School, Chantauli, Kumbhi, Gola, Lakhimpur Kheri, a copy of which has also been annexed with the rejoinder affidavit. He submits that prosecutrix has left the primary school. Thereafter, she appeared in High School Examination in different school by changing the date of birth and as such, no deliberate intention of the petitioner to mislead the Court.

9. On the other hand, learned counsel for the complainant submits that an inquiry in this regard be made in order to verify the correct date of birth of the prosecutrix. He further submits that prosecutrix has studied in the same school from where she had appeared in the High School Examination and as such,

certificate, which has been annexed by the accused persons/petitioners as Annexure No.2 to the writ petition, is fabricated and forged document.

10. On perusal of the Leaving Certificate, which has been produced by the petitioners today, it reflects that the same has been entirely different from the Transfer Certificate as contained in Annexure No. 2 to the writ petition, on the basis of which, petitioner of writ petition No. 9588 of 2011 (MB) has obtained interim order dated 27.9.2011. Thus, it appears that the petitioners of writ petition Nos. 9588 of 2011 (MB) and 10339 of 2011 (MB) have suppressed the material facts and did not come with clean hands and as such, both writ petitions deserves to be dismissed on this ground alone with heavy costs.

11. In *Prestige Lights Ltd. Vs. State Bank of India*, it was held that in exercising power under Article 226 of the Constitution of India, the High Court is not just a court of law, but is also a court of equity and a person who invokes the High Court's jurisdiction under Article 226 of the Constitution is duty bound to place all the facts before the court without any reservation. If there is suppression of material facts or twisted facts have been placed before the High Court then it will be fully justified in refusing to entertain petition filed under Article 226 of the Constitution. The Apex Court referred to the judgment of Scrutton, LJ. in *R v. Kensington Income Tax Commissioners*, and observed:

In exercising jurisdiction under Article 226 of the Constitution, the High Court will always keep in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise-guilty of misleading the Court, then the Court may dismiss the action without adjudicating the matter on merits. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of Court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.

In *Welcom Hotel and Others Vs. State of Andhra Pradesh and Others*, the Apex Court has held that a party which has misled the Court in passing an order in its favour is not entitled to be heard on the merits of the case.

12. In *K.D. Sharma Vs. Steel Authority of India Ltd. and Others*, the Apex Court has held that the jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the Writ Court must come with clean hands and put forward all the facts before the Court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim. The same rule was reiterated in *G. Jayashree and Others Vs. Bhagwandas S. Patel and Others*,

13. In Dalip Singh Versus State of Uttar Pradesh and others (2010) 2 Supreme Court Cases 114, the Apex Court has held that the making of patently false statement on oath by the appellant tenure-holders is amazing. The appellants efforts to mislead the authorities and the courts got transmitted through three generations and the conduct of the appellant and his son to mislead the High Court and the Supreme Court cannot, but treated as reprehensible.

14. Even otherwise, on perusal of the impugned FIR, a case for cognizable offence is made out and as such, we are not inclined to interfere either in the investigation or the FIR so registered.

15. For the reasons aforesaid, we are of the view that this is the case, where we thought to impose cost of Rs.25,000/-so as to deter in indulging the aforesaid activities again by the petitioners of writ petition Nos. 9588 of 2011 (MB) and 10339 of 2011 (MB), in view of the judgment of the Apex Court in the case of Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), and Dalip Singh Vs. State of U.P. and Others,

16. Writ petitions Nos. 9588 of 2011 (MB) and 10339 of 2011 (MB) are dismissed with cost of Rs.25,000/-. Petitioners of Nos. 9588 of 2011 (MB) and 10339 of 2011 (MB) are directed to deposit the cost of Rs.25,000/-before the Registrar of this Court within a month, failing which, the District Magistrate concerned will recover the same from the petitioners and after recovering the same, it shall be transmitted to the Registrar of this Court. The Registrar, on its turn, shall transmit the same in the account of Mediation and Conciliation Centre, High Court, Lucknow Bench, Lucknow. Interim order dated 27.9.2011 stands vacated.

17. However, considering the peculiar facts and circumstances of the case, writ petition No. 10269 of 2011 (MB) is disposed of finally with a direction to the Superintendent of Police, Lakhimpur Kheri to look into the matter and pass appropriate order on the petitioner's representation dated 15.9.2011 as contained in Annexure No. 3 to the writ petition, after affording opportunity of hearing to the petitioner, in accordance with law, expeditiously.