
(2012) 06 AHC CK 0050
In the Allahabad High Court

Surendra Prasad Misra and Ors.

APPELLANT

Vs

State of U.P. and Anr.

RESPONDENT

Date of Decision : 28-06-2012

Acts Referred:

Citation : (2012) 06 AHC CK 0050

Hon'ble Judges : Surendra Vikram Singh Rathore, J

Final Decision : Dismissed

Judgement

Surendra Vikram Singh Rathore, J.—Heard learned counsel for applicants and learned Additional Government Advocate and perused the record.

2. By means of this petition under Section 482 Cr.P.C. the applicants have challenged the proceedings of case no. 1597 of 2011 arising out of case crime no. 421 of 2011, under Sections 452, 323, 504 & 506 of I.P.C. and Section 3 (1) (x) of the S.C./S.T. Act, police station Lalganj, district Pratapgarh pending in the court of Additional Judicial MagistrateII, district Pratapgarh. it is submitted that there is a civil dispute between the parties regarding the land and the applicants have filed a civil suit in which they have got the injunction against the complainant and his sons. It is further submitted that initially Circle Officer called for a report from the Police Station Mahila and vide report dated 23.09.2011 it was submitted that there is a property dispute between the parties. Birji and others want to raise construction on the land of Surendra Prasad Misra and the allegations are being made each other.

3. In the judgment of State of Haryana Vs. Bhajan Lal reported in (1992) Cri. L.J. page 527 Hon"ble Apex Court has discussed the scope of the powers of High Courts under Section 482 Cr.P.C. and has held as under:

"(1). Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2). Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3). Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4). Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

(5). Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6). Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7). Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

4. In the case of *Sri Nivas Gunduluri Vs. M/s SEPCU Electric Power Construction Corporation* reported in (2010) Supreme Court Criminal Rulings page 1539 the Hon'ble Apex Court has held that the legal position is settled that when a prosecution at the initial stage is asked to be quashed the test to be applied by the court is as to whether uncontroverted allegations as made, prima facie, establish the offence. It is also for the court to take into consideration any special feature which appeared in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue.

5. In the case of *Ajay Kumar Vs. State of Jharkhand* reported in (2012) 1 SCC page 564 the Hon'ble Apex Court has held that in our considered opinion, it is not the stage when the court would make an inquiry into the factual position to find out as to whether or not the applicant is guilty of the charges or not. The applicant, in our opinion, will have sufficient opportunity to place his entire case before the court at the time of the charge.

6. In a latest pronouncement in the case of *Padal Venkata Rama Reddy @ Ramu Versus Kovvuri Satyanarayana Reddy & others* (2012) 1 SCC. The Hon'ble Apex Court while relying upon the pronouncement of the Apex Court in the case of *R.P. Kapur Vs. State of Punjab*, AIR 1960 SC 866, has held in para 11 as under:

"It is well settled that inherent power under Section 482 Cr.P.C. can be exercised only when no other remedy is available to the litigant and not in a situation where a specific remedy is provided by the statute. It cannot be used if it is inconsistent with specific provisions provided under the Code. It has further been held that inherent power is to be exercised *ex debito justitiae*, to do real and substantial justice, for administration of which alone Courts exist. Wherever any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent the abuse. It is, however, not necessary that at this stage there should be a meticulous analysis of the case before the trial to find out whether the case ends in conviction or acquittal."

7. In the facts of this case, a perusal of the first information report clearly makes out a *prima facie* cognizable case against the applicants. The documents filed by the applicants along with this application cannot be looked into at this stage. Such documents can be looked into by the trial court at the relevant stage of the trial when duly proved in accordance with law. The question of false implication at this stage cannot be considered as it is a question of fact that can be decided only on the basis of evidence on record and not in this proceeding.

8. Accordingly, this application is devoid of merits and deserves to be dismissed and is hereby dismissed.

9. However, it is provided that in case the applicants surrender before the courts below, their bail application shall be disposed of expeditiously in accordance with law.