

(2006) 05 AHC CK 0002

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 13203 of 2005

Suresh Chandra Shukla, Tilak Chandra and Hari Singh

APPELLANT

Vs

State of U.P. and Sri J. Ram, District Manager/Addl. District
Development Officer, U.P. Finance and Development
Corporation Limited

RESPONDENT

Date of Decision : 24-05-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 162, 173(8)
Penal Code, 1860 (IPC) — Section 420, 467, 468, 471

Citation : (2006) 05 AHC CK 0002

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

Bench : Division Bench

Advocate : Satish Trivedi, R.M. Saggi and Santosh Shukla, for the Appellant;
N.K. Verma, A.G.A. and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

1. This writ petition has been made for the purpose of quashing the F.I.R. in relation to case Crime No. 1092 of 2005, under Sections 467 468 471 420 I.P.C., Police Station Kotwali Orai, District Jalaun and not to arrest the petitioners along with incidental prayers

2. The first case of the petitioners is that at an earlier occasion, a charge sheet has been submitted in Case Crime No. 824 of 2005 as against the persons in connection with one M/s Rajkot Machinery Stors Jalaun at Orai. The petitioners are implicated by way of the alleged second F.I.R. registered as case Crime No. 1092 of 2005.

3. Sri Satish Trivedi, learned Senior Counsel appearing on behalf of the petitioners, has contended before this Court that the second F.I.R. cannot be held to be maintainable in the eye of law. The offence is to be taken into account but not the offender. If it is so, in that case, no second F.I.R. can be lodged on account of commission of the same offence. Since the charge sheet has been

filed before the court of competent jurisdiction, further investigation can be proceeded with the leave of the court in view of Section 173(8) of the Code of Criminal Procedure. There is no necessity of making a separate F.I.R. which is wrongful loss on the part of State machinery.

4. He further submitted that the petitioners' case should not be investigated and prosecuted without the proper sanction from the State in view of the letter No. 611/Ka-1-2005 dated 19th July, 2005, annexed as Annexure RA-1 to the rejoinder affidavit. Therefore, according to him, when no sanction was obtained, the Government employees should not be implicated in the manner as it has been done. The Government order has some face value in this respect.

5. Sri Neeraj Kant Verma, learned A.G.A., has opposed the prayer of passing any order in favour of petitioners taking the plea that there are four stages of law to be taken into consideration at the time of passing of an order. There are (i) the Constitution; (ii) the law laid down; (iii) delegated legislation and (iv) the Government orders, etc. He said the Government order cannot have any overriding effect over the law, i.e. the Criminal Laws as enacted. He said that there cannot be any bar in respect of the second F.I.R. in this respect when the prosecution found the guilt of the petitioners, the second F.I.R. was lodged.

6. Learned Senior Counsel, in reply, has contended before this Court that he has gone through the judgment, which has been delivered by this Bench in the earlier occasion in *Mukeem Ullah and Ors., etc. v. State of U.P.* reported in 2006 (3) ADJ 206 where under it was held that the second F.I.R. is not barred in respect of some circumstances. This can only be barred regarding the same occurrence disclosing the names of the same accused persons. The second F.I.R. can be lodged as against the other persons, as a different case. Therefore, the second F.I.R. cannot be hit by the provision of Section 162 of the Code of Criminal procedure.

7. In the instant case, the F.I.R. is against some other persons not in respect of the persons. Although it has been contended by Sri Trivedi that we have to proceed against the offence and not against the offender and to avoid multiplicity of the investigation, there should be leave from the Court for the purpose of further investigation as against the said persons, we are of the view that can, at the best, be considered as a mere irregularity and not the illegality. The second F.I.R. was lodged against different persons. It may ultimately be held or decided by the same court on the report of the investigation, Therefore, there is no question of multiplicity of the investigation. However, we do not find any force in the argument in this respect.

8. So far as the second submission of Sri Trivedi is concerned, we find that the submission of Sri Verma on behalf of the State that the Government orders cannot over-ride the provision of law, is an acceptable submission. According to us, the Government order is not at all happily drafted. The third paragraph of Government Order dated 19th July, 2005 is militating with the second paragraph

of the Government Order. The second paragraph talks about the lodging of the F.I.R. and third paragraph deals with the prosecution Can be it said that investigation is barred by Government order ?. Our answer is "no". The investigation cannot be stopped at any stages It is the import of law as well as the various interpretations by the courts of law. At the best, before the prosecution, leave can be obtained from the authority under certain circumstances. Since it is the stage of investigation, we cannot say, even if it has same face value, will be applicable in this case.

9. Thus, taking the totality of the matter, we are of the view that the argument, as advanced by Sri Trivedi on behalf of the petitioners cannot be accepted.

10. We have gone through the F.I.R. and also the counter affidavit of respondent No. 2. In paragraphs 20 and 25 of the counter affidavit, a specific case has been made out about the sanction for the preliminary inquiry and complicity. In para 25 of the counter affidavit, it has been stated that the petitioners gave a false certificate verifying the installation of 85 pumping sets out of which only 25 pumping sets were actually installed and payment was made for entire lot. whereas 60 pumping sets were installed only on papers. In the rejoinder affidavit, paragraphs 20 and 25 of the counter affidavit have not been controverted.

11. Therefore, taking into the totality of the matter and hearing prima facie, value on the F.I.R. no relief can be granted in favour of the petitioner.

12. Therefore, the writ petition is dismissed

13. The interim order, if any, stands vacated.

14. No order is passed as to costs.