
(1993) 06 AHC CK 0006

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 12115 of 1993

Ugrasen Singh and Ors.

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 06-06-1993

Acts Referred:

Citation : (1993) 06 AHC CK 0006

Hon'ble Judges : K.Narayan, J and Virendra Saran, J

Final Decision : Disposed Of

Judgement

K. Narayan, J.—The petitioners have approached this Court forgetting the order dated 2631993 rendered by Judicial Magistrate, Jaunpur quashed. This order relates to case crime No. 48 of 1993.

2. The facts giving rise to the present writ petition may be briefly narrated. It appears that a first information report was lodged against these petitioners at the above said crime number under Sections 336, 504, 506, 323 and 427 I.P.C. They moved the court and were admitted to bail. Subsequently on 2631993, the police submitted a report conveying that in view of the report of the Medical Officer, the case was converted into one under Section 308 I.P.C. vide Rapat No. 25 of the G.D. dated 233199J. It was desired that the accused persons be summoned through warrants and arrested for the offence under Section 308, I.P.C. The learned Magistrate directed by the impugned order of the date that the accused persons be summoned through nonbailable warrants. It is against this order that the petitioners have approached this order that the petitioners have approached this Court for a direction under Article 226 of the Constitution of India.

3. We are inclined to dispose of this petition without any individual notice to the Magistrate or the State as the matter relates to a judicial order, of which a copy is already before us and further more if due notice etc. are given, the very purpose of the mischief may stand achieved and the petitioners wronged. Learned Standing Counsel has been heard.

4, It is evident from the abovementioned facts that the petitioners had already been granted bail by the Court of Magistrate in respect of Crime No. 48 of 1993 of the said police station. The nature of the offence is now sought to be converted by the findings of medical officer which does not seem reasonable and more so when the medical report is expected to have been before the Magistrate concerned at the time of granting of the bail. The distinction between Sections 323 and 308 I.P.C. can depend upon the allegations, the correctness, which naturally could not be altered and are not the basis of the alteration vide report of the police. Apart from these factors when a person is once granted bail in respect of a particular crime, the subsequent change in the matter of reference to Sections under the offences though it may be made by the police will remain subject of consideration by the court while framing the charges. The alteration of offences in this manner is nothing else then intended harassment to the accused of a particular case. The submission of bail and bonds is not an easy affair and a man has to suffer in arranging the same. The courts should be slow in entertaining such prayers. Further more in the instant case, the accused persons, who are petitioners here were already on bail duly granted by the competent court. The mere report of the police or investigating agency for alteration in the offences could by no stretch of imagination justify issue of nonbailable warrants, which in effect mean detention in prison for no reasons. We are constrained to say that the order of the Magistrate in directing issue of nonbailable warrants when the report was only for alteration in the number of offences and prayer was only for getting arrest, was wholly unjustified to any the least about it.

5. In the circumstances, the petition is disposed of with a direction that the order dated 26/3/1993 rendered by Had Judicial Magistrate, Jaunpur shall stand quashed and the petitioners shall be allowed to remain on bail on the basis of order already made in the earlier bail order. It is clarified that the Magistrate shall be at liberty to add Section 308, I.P.C. in the description of the offences in his own record.