
(1983) 07 AHC CK 0038

In the Allahabad High Court

Case No : Criminal Misc. Petition No. 5895 of 1983

Vijay Narain Yadav

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 22-07-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 323, 332

Citation : (1983) 07 AHC CK 0038

Hon'ble Judges : M. Wahajuddin, J

Bench : Single Bench

Advocate : Tej Pal, for the Appellant;

Final Decision : Dismissed

Judgement

M. Wahajuddin, J.—The applicant has come forward with a prayer that proceedings of Criminal Case No. 89 of 1982 may be quashed. It would appear that in pursuance of the report lodged by the opposite party No. 2 concerning an alleged incident of 7-10-1982 at about 1 P.M. a case was registered, investigated upon by the police and ultimately charge sheet has been submitted by the police.

2. It is urged that the FIR is motivated and counterblast, and offence u/s 332 is not disclosed and only offence u/s 323 IPC will be made out and consequently the Investigating Officer could not carry the investigation. It is also urged that as the client of the applicant, who are the accused, was not released inspite of the release order and there were certain obstruction by way of demand of illegal gratification etc. a contempt proceeding has also been lodged. It is also urged that the Court may look into the defence as well for coming to any conclusion.

3. I have heard arguments at length. As regards the first point that offence disclosed from recitals of the FIR of opposite party No. 2 will not fall u/s 332 I may consider the very Supreme Court ruling relied upon by the applicant's Counsel and the principles laid down therein in the case of D. Chattaiah and

Another Vs. State of Andhra Pradesh, . What has been held in that case is that "where the facts disclose that a public servant was assaulted while in office as a sequel to an earlier private quarrel and the assault had no real nexus or casual connection or consequential relation with the performance of the public servant's duty as public servant, the accused could not be charged and convicted u/s 332 IPC. The principles laid down in this ruling clearly indicate that if there is any nexus between the assault and the discharge of duty then the matter will necessarily fall u/s 332 IPC.

4. On a perusal of the FIR lodged on behalf of both sides two things are certain (1) that the applicant contacted the official in the office and (2) that some type of incident did take place in which the opposite party No. 2 got injured and his nose bled. The version of the applicant in his application is that he had gone to the clerk to enquire about the issue of release parwana. The version of the opposite party No. 2 is that actually the applicant wanted to see the file and when the clerk concerned declined saying that there must be an inspection application he was assaulted resulting into aforesaid injury. In the circumstances the recitals of the FIR of opposite party No. 2 do show a nexus between the actual assault and discharge of official duty. A clerk is custodian of file even when sitting in office. Actually as a custodian he is not expected to show records surreptitiously when rules require that there can be a proper inspection application and if, he while discharging his duties, declines to show record and was then assaulted it will necessarily have a nexus with the discharge of the official duty in the office.

5. It was next urged that in any case the FIR is motivated and in cases of any patent absurdity the Court in exercise of its powers u/s 482 Code of Criminal Procedure may enter deep into the matter as to consider all the surrounding circumstances. Reliance was placed on the case of Sardar Trilok Singh and Others Vs. Satya Deo Tripathi, . In that case it was held that the dispute raised as purely of civil nature and Criminal proceedings initiated was an abuse of process of law. Reliance is further placed upon the case of Raj Kapoor Vs. Laxman, in which the Court looked into certain materials and considered the defence plea and allowing the appeal held that the prosecution is bad Reliance is also placed upon the case of Debi Prasad v. State 1973 AWR 672 . The facts of that case are patently distinguishable as in that case, actually the order of the superior authority was not strictly according to law and hence Section 332 was held to be inapplicable. Reliance was also placed upon the case of N.C. Nagpal and Others Vs. The State and Another, concerning the scope of inherent jurisdiction. There can not be a dispute that the Courts have vast powers u/s 482 Code of Criminal Procedure . What a Court has to consider is whether in each individual case it is a proper case in which such powers are to be exercised. In fact, the leading case on this point in which the guidelines were laid down concerning exercise of inherent powers is the case of R.P. Kapur Vs. The State of Punjab, . The principles laid down in that case were further reiterated in the case of Madhu Limaye Vs. The State of Maharashtra, and the latest pronouncement is

the case of Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, . In fact, principles laid down in various other pronouncements is again the same. What the Court has to examine is whether a prima facie case is disclosed, whether on the contrary the allegations are patently absurd, whether there is such a conclusive proof which will render the prosecution allegations totally false etc. At the same time the Court has to be always conscious that it is not sitting as trial Court. If it starts functioning as a trial Court itself the normal procedure established by the Code of Criminal Procedure would stand destroyed and this cannot be the object of Section 482 Code of Criminal Procedure . In the case of Municipal Corporation of Delhi (supra) it was at one place held that the Court shall examine whether, taking the allegations and materials on record as such without adding or subtracting anything to it there is a prima facie case. In fact in that very case the prosecution of some was quashed while prosecution of some other were not quashed I very much desire to avoid any observations which may cause any prejudice during trial but as all the time stress is being laid that the applicant has a defence, I could not avoid at least brief observation. Cross reports are not common but that does not mean that the law should not take normal course because there is cross case. Opposite party No. 2 had admittedly received injury in his office. It will be for the lower Court to consider whether the explanation given by the applicant for such injury that the opposite party had got struck with the table of his own accord is convincing or the prosecution allegation that this injury was caused by the applicant is more probable and likely. The appreciation will depend upon the evidence led during the trial. It was in end urged that the proceeding is contemptuous and so that should be stayed in view of the case of Haji Ahmad Hussain v. State 1960 AWR 141. It is a settled law that law has to be applied to the facts of the case. In view of the admitted facts of the case it is clear that some incident did take place in the office and naturally if that is the position the law will take its own course during the trial and proceedings cannot be considered as contemptuous. The application is summarily rejected.