

(2011) 09 AHC CK 0241
In the Allahabad High Court

Vijay Pal and Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 30-09-2011

Acts Referred:

Citation : (2011) 09 AHC CK 0241

Hon'ble Judges : S.Rafat Alam, CJ and Krishna Murari, J

Final Decision : Disposed Of

Judgement

Syed Rafat Alam,CJ and Krishna Murari, JJ.—By means of this petition under Article 226 of the Constitution of India the petitioners have sought quashing of the FIR dated 1.9.2011 registered as case crime no.243 of 2011, under Sections 364, 420, 467, 468, 471 IPC, Police Station Mutha Pandey, District Moradabad.

2. We have heard Shri Rajesh Yadav, learned counsel appearing for the petitioners and the learned AGA and also perused the record.

3. Learned counsel for the petitioners contended that the petitioners are the bonafide purchasers of the land in dispute and they have not kidnapped Anek Pal Singh, the executor of the sale deed, as alleged in the impugned FIR. He further submitted that after execution of the sale deed by Anek Pal Singh, he filed a suit for cancellation of the same. Learned counsel for the petitioners further submitted that impugned FIR has been filed just to harass the petitioners.

4. On the other hand, learned A.G.A. appearing for the State Respondents opposed the prayer.

5. Having considered the submission made on behalf of the parties, we are of the view that since the allegations made in the impugned FIR, prima facie, disclose commission of cognizable offence, therefore, there appears to be no reason to quash the same especially, when the investigation is still going on. The contention made on behalf of the petitioners are by way of defence and, therefore, the same cannot be gone into at this stage for the purpose of quashing the FIR.

6. In the case of M.L. Bhatt Vs. M.K. Pandita & others, JT 2002 (3) SC 89, the Apex Court has held that the defence version of the named accused, cannot be looked into and decided at this stage. However, keeping in view the observation made by the Apex Court in the case of Joginder Kumar Vs. State of U.P. & Others, 1994 (4) SCC 260, wherein their Lordships have held that no arrest should be made unless the investigating agency finds credible evidence collected during the investigation showing the involvement of the accused person or the investigation cannot be completed without effecting the arrest, in that eventuality only the arrest is to be undertaken. Therefore, normally, merely on the allegation without there being any evidence showing involvement of the accused, the recourse of arrest is not to be undertaken.

7. We are, therefore, of the view that in the facts and circumstances and also having regard to the view expressed by the Apex Court in the case of Joginder Kumar (supra), it would be appropriate to dispose of the writ petition at this stage without expressing any opinion on merits in respect of the allegations made, with the direction that the investigation of the case crime no.243 of 2011, under Sections 364, 420, 467, 468, 471 IPC, Police Station Mutha Pandey, District Moradabad, shall continue and be concluded expeditiously. However, the petitioners shall not be arrested unless some credible evidence during the investigation is collected showing his involvement provided they cooperate with the investigation and appear before the Investigating Officer as and when called upon.

8. It goes without saying that in the event, the petitioners do not cooperate with the investigation, the petition shall be deemed to have been dismissed and it would be open to the Investigating Officer to take steps in accordance with law.

9. With the above order, the writ petition stands disposed of finally.