
(2015) 01 AHC CK 0012

In the Allahabad High Court

Case No : Criminal Misc. Writ Petition Nos. 434, 1255, 2423 and 3481 of 2014

Vikash Anand Singh and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 200, 201, 21
Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 147, 148, 406, 420, 427

Citation : (2015) 2 ACR 2077 : (2015) 88 ALLCC 886

Hon'ble Judges : Devendra Kumar Upadhyaya, J.; Ravindra Singh, J.

Bench : Division Bench

Advocate : Rana Mritunjay Singh, Anil Ku. Tiwari, Asok Pandey, Onkar Pandey, L.M. Khare and N.K. Pathak, for the Appellant; Amrendra Nath Tripathi and D. Gupta, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ravindra Singh and Devendra Kumar Upadhyaya, JJ.—These writ petitions have been filed by the respective petitioners primarily seeking quashing of the First Information Reports lodged against them. In Writ Petition No. 2423 (MB) of 2014, besides the prayer for quashing the First Information Report dated 29.12.2012, registered at Case Crime No. 503 of 2012, under sections 406, 420, 467, 468, 471, 147, 148, 452, 504, 506, 427 I.P.C., Police Station Krishna Nagar, District Lucknow, a prayer for issuing a writ in the nature of mandamus directing the respondents not to arrest the petitioners in the aforesaid case crime number has also been made. It has also been prayed that the provisions contained in section 9 of the U.P. Act No. 16 of 1976 be declared as ultra vires to the provisions of the Constitution and further to direct the respondents and their instrumentalities not to give effect to the provisions contained in the said Act. It has further prayed that a writ of mandamus be issued to the respondent Nos. 1 and 2, namely, Union of India through Secretary to Hon'ble President and Union of India through Secretary, Home to immediately accord the assent to the Code

of Criminal Procedure Uttar Pradesh (Amendment) Bill, 2010, whereby the State Legislature of U.P. has passed the Bill for restoration of section 438 of the Code of Criminal Procedure in its application to the State of U.P. So far as the constitutional validity of section 9 of U.P. Act No. 16 of 1976 is concerned, issue is no more res integra as the same stands concluded by the Constitution Bench of Hon''ble Supreme Court in the case of Kartar Singh Vs. State of Punjab, , whereby the constitutional validity of the said U.P. Act No. 16 of 1976 has been upheld.

2. Section 438 of the Code of Criminal Procedure makes a provision for grant of bail to persons apprehending arrest which is also known as the provision for anticipatory bail. Section 438 of the Code of Criminal Procedure provides that where any person has apprehension that he may be arrested on charges of having committed a non-bailable offence, he may move to the High Court or the Court of Sessions for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration certain factors mentioned in section 438 of the Code of Criminal Procedure itself, either reject the application or issue an interim order for grant of anticipatory bail.

3. The Legislature of the State of U.P. by enacting section 9 of the Code of Criminal Procedure Uttar Pradesh (Amendment) Act, 1976 i.e. U.P. Act No. 16 of 1976 has deleted section 438 of the Code of Criminal Procedure in its application to the State of U.P. The constitutional validity of section 9 of U.P. Act No. 16 of 1976 by which the Legislative Assembly of U.P. has deleted section 438 of the Code of Criminal Procedure as applicable to the State of U.P. was examined by the Constitution Bench of Hon''ble Supreme Court in the case of Kartar Singh v. State of Punjab (supra). The Hon''ble Supreme Court in the said case of Kartar Singh v. State of Punjab (supra) rejected the contention that the U.P. Act No. 16 of 1976 is unconstitutional and that deletion of section 438 of the Code of Criminal Procedure in its application to the State of U.P. is violative of constitutional provisions. The challenge made on the ground of State Legislature's incompetence was also rejected. The majority view of Hon''ble Supreme Court in para 368 has concluded that the deletion of section 438 by section 9 of the Code of Criminal Procedure Uttar Pradesh (Amendment), 1976 is valid. The conclusion 15 drawn by Hon''ble Supreme Court in the said case in para 368 is as under:--

"(15) The deletion of the application of section 438 in the State of Uttar Pradesh by section 9 of the Code of Criminal Procedure (U.P.) Amendment, 1976 does not offend either Article 14 or Article 19 or Article 21 of the Constitution and the State Legislature is competent to delete that section, which is one of the matters enumerated in the Concurrent List (List III of the Seventh Schedule) and such deletion is valid under Article 254(2) of the Constitution;" 4. Thus, the prayer made for declaring the provision contained in section 9 of the Code of Criminal Procedure (U.P.) Amendment, 1976 cannot be acceded to, which is hereby

rejected.

5. We may now examine the other prayer made by the petitioners in Writ Petition No. 2423 (MB) of 2014 whereby it has been urged that a writ of mandamus be issued directing the Hon''ble'' President of India to accord the assent to the Criminal Procedure Uttar Pradesh (Amendment) Bill, 2010. It appears that with a view to restore the provision of section 438 in the Code of Criminal Procedure in its application to the State of U.P., the State Legislature passed the Code of Criminal Procedure Uttar Pradesh (Amendment) Bill, 2010, which was sent to the Government of India, Ministry of Home Affairs seeking assent of Hon''ble President of India as required under Article 201 of the Constitution of India. The Government of India, however, vide a letter dated 19.4.2011 responded the State Government with the comments of Judicial Cell of the Ministry of Home Affairs. However, in the meantime, Government of U.P. was intimated by means of letter dated 8.9.2011 that in pursuance of the proviso to Article 201 read with Article 200 of the Constitution of India, the President has been pleased to withhold her assent from "The Code of Criminal Procedure Uttar Pradesh (Amendment) Bill, 2010.

6. In the aforesaid background, the prayer has been made by the petitioner for issuing the direction to Hon''ble President to accord the assent to the Code of Criminal Procedure Uttar Pradesh (Amendment) Bill, 2010. The said prayer cannot be accepted as no such mandamus can be issued by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. Further, Hon''ble President has already withheld her assent from "The Code of Criminal Procedure Uttar Pradesh (Amendment) Bill, 2010 passed by the State Legislature as per information contained in the letter of Government of India, Ministry of Home Affairs dated 8.9.2011.

7. Thus, the aforesaid prayer made by the petitioner can also not be granted.

8. As regards the challenge made by the petitioners in all the writ petitions relating to quashing of the First Information Reports, we have examined the matter and find that the contents of the First Information Reports, prima facie, disclose commission of cognizable offence. Hence, at this stage, the First Information Reports cannot be quashed.

9. The interim orders passed in respective writ petitions are hereby vacated. The writ petitions are, thus, hereby dismissed.