

Court No. - 65

Case :- CRIMINAL MISC. WRIT PETITION No. - 313
of 2019

Petitioner :- Seraj Ahamad And 2 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Sanjai Kumar Singh

Counsel for Respondent :- G.A.

Hon'ble Karuna Nand Bajpayee,J.

Hon'ble Ifaqt Ali Khan,J.

This writ petition has been filed seeking the quashing of F.I.R. dated 21.09.2018 registered as Case Crime No. 708 of 2018, under Sections 147/148/149/307/427/323/504/506/452/436/353/332 IPC, P.S.- Gulriha, District- Gorakhpur.

Heard petitioners' counsel and learned A.G.A.

Entire record has been perused.

All the contentions raised by the petitioners' counsel relate to disputed questions of fact. The court has also been called upon to adjudge the worth of prosecution allegations and evaluate the same on the basis of various intricacies of factual details which have been touched upon by the learned counsel. The veracity and credibility of indictment has been questioned, absence of material which may substantiate the allegations has been contended and false implication has been pleaded.

The law regarding sufficiency of grounds which may justify quashing of F.I.R. in a given case is well settled. The court has to eschew itself from embarking upon a roving enquiry into the last details of the case. It is also not advisable to adjudge whether the case shall ultimately end in submission of charge sheet and then eventually in conviction or not. Only a prima facie satisfaction of the court about the existence of sufficient ingredients constituting the offence is required in order to see whether the F.I.R. requires to be investigated or deserves quashing. The ambit of investigation into the alleged offence is an independent area of operation and does not call for interference in the same except in rarest of rare cases. The view taken in the case of ***Satyapal vs. State of U.P. and others, 2000 Cr.L.J. 569*** which

was further confirmed by another Full Bench of this Court in the case of **Ajit Singh @ Muraha v. State of U.P. and others (2006 (56) ACC 433)** makes the position of law in this regard clear and this Court does not find it advisable to whittle down the power or scope of investigation in the given case. The operational liberty to collect sufficient material, if there exists any, cannot be scuttled prematurely by any uncalled for overstepping of the Court. It has to be an extremely discreet exercise.

The Apex Court decisions given in the case of **R.P. Kapur Vs. State of Punjab AIR 1960 SC 866** and in the case of **State of Haryana Vs. Bhajan Lal 1992 SCC(Cr.) 426** have also recognized certain categories by way of illustration which may justify the quashing of a complaint or charge sheet and the same may also be good grounds to quash the F.I.R. Some of them are akin to the illustrative examples given in the case of **Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi 1976 3 SCC 736**. The cases where the allegations made against the accused in the F.I.R. or the evidence collected by the Investigating Officer do not constitute any offence or where the allegations are absurd or extremely improbable or impossible to believe or where prosecution is legally barred or where criminal proceeding is malicious and malafide instituted only with ulterior motive or grudge and vengeance alone, may be illustratively the fit cases for the High Court in which the F.I.R. or the criminal proceedings may be quashed. If a particular case falls in some such categories as recognized by the Apex Court in **Bhajan Lal's** case, it may justify the interference by this Court in exercise of its inherent power as provided in Code of Criminal Procedure or in exercise of its powers vested by the Constitution of India.

Illumined by the case law referred to herein above, this Court has adverted to the entire record of the case.

The submissions made by the petitioners' learned counsel call for determination on pure questions of fact which may be adequately discerned either through proper investigation or which may be

adjudicated upon only by the trial court and even the submissions made on points of law can also be more appropriately gone into only by the trial court in case a charge sheet is submitted in this case. This Court does not deem it proper, and therefore cannot be persuaded to have a pre-trial before the actual trial begins. This Court also does not deem it proper to suffocate or trammel the ambit and scope of independent investigation into the case. A threadbare discussion of various facts and circumstances, as they emerge from the allegations made against the accused, is being purposely avoided by the Court for the reason, lest the same might cause any prejudice to either side during investigation or trial. But it shall suffice to observe that the perusal of the record makes out prima facie offences at this stage and there appear to be sufficient ground for investigation in the case. We do not find any justification to quash the F.I.R. or the proceedings against the accused arising out of it as the case does not fall in any of the categories recognized by the Apex Court which may justify their quashing.

The prayer for quashing the same is refused as we do not see any breach of constitutional provisions or any abuse of the process of law.

However, in the wake of conspicuous facts and circumstances of the case and the nature of allegations and also keeping in view the various contentions raised on behalf of the petitioners based on the provisions of Section-157 Cr.P.C. and on the view taken by the Apex Court in the case of **Joginder Kumar vs. State of U.P.; 1994 Cr.L.J. 1981**, it is directed that the petitioners shall not be arrested in above mentioned case, unless credible evidence against them is collected by the Investigating Officer during investigation.

It is clarified that this order has been passed only with regard to the accused on behalf of whom this writ petition has been moved in this Court.

With the aforesaid observations this writ petition is finally disposed off.

Order Date :- 8.1.2019/Vikram