
(1993) 02 AHC CK 0076

Allahabad High Court

Case No: Criminal Misc. Writ Petition No. 33799 of 1992

Smt. Sushila Pant

APPELLANT

Vs

Station House Officer and Others

RESPONDENT

Date of Decision: Feb. 21, 1993

Acts Referred:

- Constitution of India, 1950 - Article 21, 226
- Penal Code, 1860 (IPC) - Section 304A
- Prevention of Corruption Act, 1988 - Section 7

Citation: (1993) 17 ACR 122

Hon'ble Judges: Palok Basu, J; J.P. Semwal, J

Bench: Division Bench

Advocate: M.P. Rai and G.S. Chaturvedi, for the Appellant;

Final Decision: Allowed

Judgement

Palok Basu, J.

The Petitioner is a Government Servant and was posted as Lady Medical Officer in the Hospital where the Informant's sister was admitted for delivery case. It is alleged that after she gave birth to a mala child excessive blood flowed and she was yet made to go walking to the operation theatre for some proposed treatment or operation. In spite of the repeated complaints by the informant no steps were taken by the lady doctor (Petitioner Smt. Sushila Pant). It was alleged in the end of the FIR that a sum of Rs. 500/- was demanded from the informant for treatment on these facts, the argument advanced by the learned Counsel for the Petitioner is that neither a case u/s 304-A, IPC is made out nor provision of Section 7 of the Prevention of Corruption Act can be attracted in this case.

2. Suffice it to say for the time being that the allegations made in FIR prima facie indicate making out the offences. Therefore, at the stage of examining the allegations in the FIR the truth or otherwise of the allegations made therein shall

not be examined by the High Court in the exercise of powers under Article 226 of the Constitution of India (See the case of [State of West Bengal and Others Vs. Swapan Kumar Guha and Others](#), case of [State of Bihar and Another Vs. P.P. Sharma, IAS and Another](#), and case of [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), . Therefore, this is not a fit case for quashing the FIR or the investigation therein in the exercise of powers under Article 226 of the Constitution of India.

3. It was then vehemently argued by the learned Counsel for the Petitioner that in this case a direction be issued to the court below concerned that the hearing of the bail application moved by the Petitioner should be done on that very date on which it is moved. The conflict of two Division Bench decisions, one delivered by Hon"ble S.K. Mookerji, J. with whom Hon"ble A.N. Gupta-J agreed, and the other by the Lucknow Bench of our Court delivered by Hon"ble J.K. Mathur, J, with whom Hon"ble K.L. Sharma agreed, has been noticed in the two writ petitions. It has been rightly argued by Sri G.S. Chaturvedi that this writ petition may also be directed to be connected with those two writ petitions, namely Civil Misc. Writ Petition No of 1992, Dr. Vinod Narain v. State of U.P. and Ors. and Civil Misc. Writ Petition No. of 1993. Smt. Bhagwan Devi and Ors. v. State of U.P. and Ors. enabling the larger Bench to consider the case of the Petitioner, a Government Servant, on the question as to whether in the light of Article 21 read with Clause 49-A CCA Rules which lay down that a government servant put into custody beyond 48 hours is likely to be suspended, this Court will be justified in issuing a direction to the court below concerned to bear and decide the bail application of a government servant on that very date on which it is moved by the said government servant. In this view of the matter, the argument of Sri G. Section Chaturvedi is that in such cases where technically offences are disclosed, the citizens" cases have to be viewed more pragmatically as strictly legal interpretation likely to interfere with the right of employment, should also be examined.

4. In view of the aforesaid discussion, it is hereby directed that this writ petition No. 33799 of 1992, Smt. Sushila Pant v. Station House Officer Police Station Srinagar. PauriGarhwal, may also be connected with the aforesaid two writ petitions i.e. Civil Misc. Writ Petition Noof 1992, Dr. Vinod Narain v. State of U.P. and Ors., and Civil Misc. Writ Petition No. of 1993, Smt. Bhagwan Devi and Ors. v. State of U.P. and Ors..

5. The application for amendment moved today in the present writ petition is allowed. The prayer made in the writ petition are rejected. The only question, whether the Petitioner"s bail application can be directed to be considered on the same day it is moved, has only to be decided now.

6. Sri P.E. Bisaria, learned Standing Counsel prays for and Is granted two weeks time to file a counter-affidavit In this writ petition as well an in the writ petitions mentioned above, which have been referred to a larger Bench of this Court for decision yesterday i.e.-1-2-1993. Rejoinder-affidavit in this petition as well as in the

aforesaid two writ petitions may be filed within a week thereafter. Sri B.K. Bisaria and Sri G. Section Chaturvedi shall also file their written arguments alongwith their respective affidavits that they would be filing within the aforesaid period.

7. The arrest of Petitioner Smt. Shushila Pant is stayed till 31-3-1993 unless vacated or modified earlier.