
Ataullah Vs The State of U.P. and others

Misc. Bench No. 12972 of 2011

Court: Allahabad High Court

Date of Decision: Dec. 23, 2011

Acts Referred:

Constitution of India, 1950 " Article 141, 144, 226#Criminal Procedure Code, 1973 (CrPC)
" Section 41(1)#Lok Sampati Hani Niwaran Adhiniyam, 1984 " Section 3(2)#Penal Code,
1860 (IPC) " Section 352, 379, 506

Hon'ble Judges: Sudhir Kumar Saxena, J; Sudhir Agarwal, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. Heard learned counsel for petitioner.

2. Petitioner has come to this Court in this writ petition with prayer for quashing of first information report dated 7.12.2011 in case crime no. 647

of 2011, under Sections 379, 506, 352 I.P.C. and 3(2) Lok Sampatti Niwaran Adhiniyam, 1984, Police Station Bazar Shukul, District C.M.S.

Nagar.

3. From a bare perusal of first information report, it cannot be said that no offence is made out. Learned counsel for petitioner, at this stage,

submitted that Police is unauthorizedly trying to arrest the petitioner and, therefore, his arrest should be stayed till the report is submitted by Police.

He placed reliance on a Division Bench Judgment of this Court in Criminal Misc. Writ Petition No. 17410 of 2011 Shaukin Vs. State of Uttar

Pradesh and others decided on 14.12.2011. A perusal of aforesaid judgment clearly shows that considering the peculiar facts and circumstances

involved in that matter, the Court expressed its displeasure at the casual and routine manner by which the concerned Judicial Magistrate allowed

judicial remand of accused on mere application moved by the concerned police officer without examining pre-conditions for granting judicial

remand laid down in Section 41(1)(b) Cr.P.C. and the decision of this High Court and Apex Court.

4. It admits no doubt that whenever a law is laid down by Apex Court, it is binding on all the authorities, whether executive or judicial, in the entire

Country. The law laid down by Apex Court is the law of land and everybody in this Country is bound to obey the same. Article 141 of

Constitution declares that the law declared by the Apex Court shall be binding on all Courts within the territory of India and Article 144 says that

all authorities, civil and judicial, shall act in aid of Supreme Court. The supremacy of the law laid down by Apex Court with the binding effect

admits no doubt. The executive authorities including the Police, therefore, are neither expected nor can act in a manner which would be contrary to

law laid down by Apex Court else the erring official(s) would be responsible to face its consequences. Similarly, if a law has been laid down by this

Court, in the State it is binding and ought to be complied by all the authorities concerned whether executive or judicial.

5. However, it cannot be said that whenever a person, against whom a first information report has been lodged, comes to this Court, on his mere

asking this Court should pass an order restraining the Police from arresting him unless the pleading in writ petition demonstrate that Police is likely

to arrest the petitioner and that too unauthorizedly and illegally. In other words, a petitioner must plead and substantiate that Police authorities are

trying to illegally arrest the petitioner before he seeks indulgence of this Court restraining the Police authorities from doing so. The scope of writ

petition under article 226 in which a request has been made for quashing of first information report should not be extended like a bail application to

be considered by this Court in a routine manner without there being appropriate pleading and material to substantiate the same. It is well settled

that Court shall not issue futile and superfluous writs. Unless an allegation is made and substantiated, such direction ought not to be issued. There is

no presumption that the executive authorities including Police shall not act strictly in accordance with law which includes the statutory law as well as

the judicial orders issued by Court and in particular the Apex Court. We cannot presume that any authority will be acting illegally unless a specific

case is pleaded and substantiated before this Court. The presumption lies in favor of executive authorities that they are acting in accordance with

law unless shown otherwise. It is true that at ground level, scenario has deteriorated to some extent and time and again the matters have come

wherein the highhandedness, brutality and other illegal acts of Police authorities have been reported to the Courts and the Courts have also passed

stern appropriate orders therein but that does not mean that the same would form a rule of practice in every case for such presumption.

6. It is also noteworthy to mention that mere lodging of first information report does not mean that a person has to be arrested necessarily unless

the circumstances so justify and the Police authorities have appropriate and genuine reasons for the same. The people's liberty is of paramount

importance and cannot be curtailed merely for the reason that a first information report regarding commission of an offence has been lodged since

for the purpose of arrest, different conditions are required to exist before any Police officer shall proceed to arrest any person. We have no

hesitation in saying that in a suitable and appropriate case, if any illegality on the part of any Police officer is brought out before this Court, we shall

not hesitate in taking appropriate stern action in the matter but that would not mean that in every case in a routine manner, this Court should/shall

pass order staying arrest of the person accused in a criminal case.

7. In our view, in this particular case there is no such pleading substantiated with appropriate material that any Police officer is acting illegally so as

to warrant any protection/direction from this Court. However, we make it clear that in case any authority acts illegally, it is always open to

petitioner to approach appropriate Forum including this Court for appropriate protection but no mandamus at this stage ought be issued

particularly when the first information report shows commission of an offence warranting no interference.

8. With the aforesaid observation, the writ petition is dismissed.