

(2006) 11 AHC CK 0198**Allahabad High Court****Case No:** Criminal Miscellaneous Application No. 7795 of 2003

Prem Chand Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Nov. 20, 2006**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 218, 342

Citation: (2007) 2 ACR 1485**Hon'ble Judges:** Barkat Ali Zaidi, J**Bench:** Single Bench**Advocate:** Shiv Avtar Sharma, for the Appellant; Patanjali Mishra and A.G.A., for the Respondent**Final Decision:** Dismissed**Judgement**

Barkat Ali Zaidi, J.

In these proceedings u/s 482, Cr. P.C. filed by Prem Chand Sharma, who was a Sub-Inspector and was posted as S.H.O. P.S. Naubasta, Kanpur Nagar and has been suspended, the allegation is that his suspension was mala fide and was occasioned because of political influence in the case of Ved Prakash Gupta. However, the relief sought is not about his suspension and the relief sought is that the charge-sheet filed against him be quashed.

2. I have heard Sri Shiv Autar Sharma, advocate for the applicant and Sri Patanjali Mishra, learned A.G.A. for the opposite party No. 1, State.

3. The case was that Ved Prakash Gupta agreed to purchase some golden coins from two persons and he came to Kanpur from Bindki, Fatehpur on the appointed place, which was a road intersection, in Kanpur. The said two persons Gajendra Singh and Pappu alongwith their cohorts ran away with rupees one lac, which he had brought in his bag, without giving him the golden coins and only 1-2 gold coins were shown

to him and in the bag, there were iron rings. The said Ved Prakash Gupta and some other people alongwith the police ran behind the culprits and they were apprehended with the money bag. F.I.R. was thereafter, filed the next day, on 2.5.2002 at 20.10 and money bag was deposited in the police station Naubasta, district Kanpur Nagar.

4. The allegation of the applicant is that pressure was exerted on him by the higher police officers for return of the amount to said Ved Prakash Gupta but he did not do so because the said money was case property. Subsequently, the application of Ved Prakash Gupta filed earlier for return of money in the court of III A.C.M.M. Kanpur Nagar was also rejected by the Court. Since the police high ups. became annoyed a false case was foisted of the same occurrence against the applicant and other police officials by filing the second F.I.R. on 7.5.2002 after five days of the first F.I.R. in which various allegations were made against the applicant. The matter was, thereafter, investigated after both case crimes were amalgamated, and the Station Officer of Police Station Govindpuri filed a charge-sheet against the applicant, under Sections 342 and 218, I.P.C. being Case Crime No. 381 of 2002 which is presently pending in the court of II C.M.M. Kanpur Nagar.

5. The contention of the applicant is that the charge is fallacious and mala fide and the Sections under which he has been charged cannot be said to be made out in view of the circumstances of the case and the charge-sheet should, therefore, be quashed. One of the contentions of the Petitioner also is that the second F.I.R. cannot be taken into consideration.

6. The applicant seems to be in a hurry and has run to the High Court without giving an opportunity to the trial court to see and to assess the situation and to determine what offences, if any, is *prima facie* made out against the applicant in the case and, to determine under what charges, if any, he should be tried. The trial court has not yet framed charges and had, therefore, no opportunity to scrutinise the case and to see what charges, if any, can be framed against the applicant.

7. The applicant wants the High Court to function as a Sessions Judge and to see initially whether any of the sections under which charge-sheet has been submitted is applicable or not? The question of the second F.I.R., and the consequence thereof, shall also have to be looked into, by the trial court.

8. The application is, therefore, premature and deserves to be dismissed straightforwardly.

9. The petition is dismissed.

10. Registry will send a copy of this order to A.C.M.M. II Kanpur Nagar where the case is pending, through the District Judge, Kanpur Nagar.