

(1997) 09 AHC CK 0241

Allahabad High Court

Case No: Criminal Miscellaneous Application No. 1041 of 1997

Mohammad Shakeel

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Sept. 5, 1997

Acts Referred:

- Hindu Marriage Act, 1955 - Section 24
- Prevention of Corruption Act, 1988 - Section 13(2), 24

Citation: (1997) 21 ACR 945

Hon'ble Judges: S.K. Phaujdar, J

Bench: Single Bench

Advocate: W.H. Khan, for the Appellant; Lal Bahadur, for the Respondent

Final Decision: Disposed Of

Judgement

S.K. Phaujdar, J.

The applicant has prayed for quashing an F.I.R. dated 9.2.1997 lodged at P.S. Colonel Ganj, Allahabad, in case Crime No. 139 of 1997 under Sections 161 and 165A, I.P.C. and 13(2) of the Prevention of Corruption Act (State v. Brij Bhushan and Ors.). There has been a further prayer that during investigation of the aforesaid case, the applicant may be given protection against arrest.

2. It is necessary to state the background of the F.I.R. A matrimonial suit had been pending before the Family Court at Allahabad between Respondent No. 2, Dr. Lal Bahadur Maurya (in short, Dr. Maurya) and his wife Smt. Nirmala Devi. Dr. Maurya was not satisfied with certain proceedings of the Family Court in the aforesaid case and he made certain complaints to the Hon'ble the Chief Justice of Allahabad High Court. One of the grievances of Dr. Maurya was that he was not being given the certified copy of the orders despite his proper application. The Hon'ble the Chief Justice gave a personal hearing to Dr. Maurya and, thereafter, under his orders, the District Judge in-charge at Allahabad intimated the Family Court to look into that

aspect of the complaint of Dr. Maurya which covered alleged demand of illegal gratification from Dr. Maurya by the present applicant, Mohd. Shakeel, and certain other Staff of the family court. The Judge of the Family Court made certain examinations of Dr. Maurya and, thereafter, he lodged an F.I.R. not only against his assistants named in the statement of Dr. Maurya but also against Dr. Maurya himself for offences under Sections 161 and 165A, I.P.C. read with Section 13(2) of the Prevention of Corruption Act (old provision). This F.I.R. is under challenge in the present application.

3. It was contended on behalf of the applicant that he was the accounts clerk in the Family Court at Allahabad and was acting as suits clerk also on being given the additional charge thereof. It was urged on his behalf that the Judge of the Family Court had ceased the services of Mohd. Shakeel by his order dated 4.6.1996. This order was challenged by Mohd. Shakeel in C.M. Writ Petition No. 19423 of 1996 in which the Judge of the Family Court was made a Respondent and there had been an interim order staying the operation of the order dated 4.6.1996. The applicant asserted that this had annoyed the Judge of the Family Court against him.

4. As regards the matrimonial case pending between Dr. Maurya and his wife, it was stated by the applicant that the Judge of the Family Court had allowed the application u/s 24 of the Hindu Marriage Act filed by the wife of Dr. Maurya and thereupon. Dr. Maurya had made a complaint to the Hon"ble the Chief Justice of Allahabad High Court. It was stated that there was no occasion for the present applicant to demand any money from Dr. Maurya and taking chance of the complaint, the Judge of the Family Court fed fat his grudge against the present applicant by lodging an F.I.R. which was not to be supported by facts.

5. The instant application was presented on 11.3.1997 and was put up two days thereafter when Dr. Maurya was directed to be noticed and an interim order was passed staying the arrest of the applicant in the concerned case Crime No. 139 of 1997. This interim order was extended from time to time and is still under operation.

6. Dr. Maurya contended while appearing in person as Respondent No. 2 that the powers u/s 482 could not be exercised to quash an F.I.R. when the F.I.R. did disclose commission of a cognisable offence. He relied on a decision of the Supreme Court as reported in (1994) 2 SCC 227. It was further contended by Dr. Maurya that Sections 161 and 165A, I.P.C. were repealed by the Prevention of Corruption Act, 1988 and Section 24 of the last mentioned Act protects him from prosecution on the basis of his statement of giving the illegal gratification.

7. Looking to the provisions of the Prevention of Corruption Act, 1988 and the decision relied upon by Dr. Maurya, I find all force in his argument. The F.I.R. is still under investigation and there are allegations of acceptance of gratification by certain persons in the office of the Family Court and it would be improper,

therefore, to quash the F.I.R. As regards the second prayer of stay of arrest, however, it is felt that looking to the allegations of animosity between the Judge of the Family Court and the present applicant for which a writ petition has been filed in which an interim order has also been passed, the applicant could make out a case to get a protection against arrest. This protection is to be given against Respondent No. 2. Dr. Lal Bahadur Maurya also in view of provisions of Section 24 of the Prevention of Corruption Act.

8. The present application stands disposed of with the direction that the investigation in the concerned case shall continue subject to full co-operation of the present applicant and Dr. Lal Bahadur Maurya, present Respondent No. 2, but till the submission of the charge-sheet, neither the present applicant, Mohd. Shakeel, nor the present Respondent No. 2, Dr. Maurya may be arrested. The Investigating Officer as well as the court before whom the report of the police u/s 173 may be submitted will take note of the provisions of Section 24 of the Prevention of Corruption Act, 1988.