

Khan Saulat Hanif Vs State of U.P. and Shri Ramesh Chandra Jain

Court: Allahabad High Court

Date of Decision: Aug. 30, 2007

Acts Referred: Constitution of India, 1950 " Article 226
Criminal Procedure Code, 1973 (CrPC) " Section 482
Motor Vehicles Act, 1988 " Section 130, 177, 194, 196, 207
Penal Code, 1860 (IPC) " Section 384, 395, 397, 506

Hon'ble Judges: K.N. Ojha, J; Imtiyaz Murtaza, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Imtiyaz Murtaza and K.N. Ojha, JJ.

This petition has been filed for quashing of the F.I.R. registered at case crime No. 62 of 2007 under

Sections 395, 397, 384, 506 I.P.C. police station Bargarh District Chitrakoot lodged by respondent No. 4 Ramesh Chand Jain.

2. According to the allegations of the first information report the informant is proprietor of firm Vardhman Industrial and Trading Corporation BKD

College Chauraha, Gwalior Road, Jhansi and deals in the business of purchasing scrap in auction from railways. On 26.6.2007 he purchased iron

scrap of PW1 Shankargarh. After purchasing the said scrap he received a telephone call from the mobile No. 9336840875 of Mohd. Shahjad

who is an associate of Atiq Ahmad, Member of Parliament threatening him that he had committed big mistake by purchasing the goods and he

should be ready for heavy financial losses and reminded him that earlier also an attack was made on him at the office of PW1, Shankargarh and at

that time Jafar Bhai, Farooq Bhai and Shaulat Vakeel warned him that he should not purchase the goods at Shankargarh and Allahabad and also

threatened him not to register the F.I.R. otherwise he will be killed. It was further mentioned in the report that he tried to lodge the report against

them but on account of influence of Atiq Ahmad, he could not lodge the report. He did not succumb to the threats extended to him and between

1.8.2007 and 4.8.2007 he started lifting the iron of PW1 Shankargarh and in the night at about 1.30 to 2.30 p.m. on 4.8.2007 when his loaded

Truck was parked near Madhyamik Vidyalay Kaiya Dandi Road near Police Station Bargarh in a planned manner the persons named in the

report through Aslam and 15 - 20 persons forcibly looted the goods and loaded the same in Truck No. UP 60-T 0687 and his three chaukidar Jai

Prakas, Nairn Khan and Sunil Raikwar were assaulted on the point of gun and money was also snatched from their pockets and after tying them

with a rope they escaped alongwith the looted iron. His Chaukidar Jai Prakash informed him on telephone about the incident and told him that they

had also demanded Rs. two lacs from him and also threatened him not to purchase the goods otherwise he will be killed. After receiving the

information he came to Bargarh from Allahabad and lodged the report.

3. We have heard Shri Satish Trivedi, Shri S.M.A. Kazmi and Shri D.S. Misra, Senior Counsels, learned Counsels for the petitioner and the

learned A.G.A. for the State.

4. Shri Satish Trivedi submitted that the petitioner is a practicing lawyer having 21 years of experience and whenever Bahujan Samaj Party comes

into power the members of Samajwadi Party are falsely roped in different criminal cases. The petitioner was representing Atiq Ahmad in several

cases and has been falsely implicated only on account of his professional relationship with Atiq Ahmad. It is further submitted that the allegations of

the F.I.R. are highly improbable and no prudent man will believe the allegations to be true and from bare perusal of the F.I.R. it cannot be said that

any allegations in the report attracts the cognizable offence against the petitioner. The name of the petitioner has been mentioned alongwith other

accused persons without mentioning his participation about the incident for which report has been lodged and further argued that the allegations

made against the petitioner are vague and do not constitute cognizable offence. Shri S.M.A. Kazmi Sr. Advocate submitted that on account of

political reasons several reports have been registered against the petitioner . In two F.I.Rs. which were registered against the petitioner his arrest

had been stayed on the ground that the petitioner was an Advocate and he represented Atiq Ahmad, Member of Parliament as his counsel. It is

further submitted that the impugned F.I.R. is malafide and also placed reliance on the decision of Apex Court in the case of State of Haryana v.

Bhajan Lal reported in 1992 SCC 426 wherein it has been held that ""the extra ordinary powers under Article 226 or the inherent power u/s 482

Cr.P.C. can be exercised by the High Court where the allegation made in the F.I.R. or the complaint, even if they are taken at their face value and

accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused and where the allegations made in the

F.I.R. or the complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that

there is sufficient ground for proceeding against the accused and where a criminal proceeding is manifestly attended with malafide and/or where the

proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and

personal grudge

5. Sri Kazmi further submitted that no allegations have been made against the petitioner which could attract the penal provisions and the allegations

made in the impugned report are highly improbable. It was pointed out that according to the averments made in the report the Truck in which the

goods were looted had covered only two kms in 12 hours before it was recovered by the police and no prudent man can believe these allegations

as true. Attention of the Court was also drawn to paragraphs 13, 14, 15 and 16 of the petition where other instances were mentioned about

registration of false reports against the lawyers of Atiq Ahmad.

6. Shri D.S. Misra, learned Counsel for the petitioner submitted that perusal of the F.I.R. indicates that the first informant is not an eyewitness and

he lodged the report on the basis of information given by his Chaukidar and this fact cannot be accepted that the petitioner was known to the

Chaukidar of the informant from before.

7. On the other hand learned A.G.A. submits that the F.I.R. clearly discloses the commission of cognizable offence. There are allegations that

Aslam and 15-20 persons have looted the iron in a planned manner at the instance of the person whose names were mentioned in the report and

name of the petitioner finds place in the report.

8. The learned A.G.A. pointed out that in the report it is clearly mentioned that ""Yojnabadh Tarike Se Uprokt Logo Ke Dwara Aslamadi 15-20

LOGO Ne Truck No. UP 62-T 0687 Me Jabran Bhar Liya "" and in view of the specific averments in the report it cannot be said that there is no

allegation against the petitioner. It is further pointed out by the learned A.G.A. that after registration of the report the goods of the informant were

recovered by the S.O. Pramod Kumar Pandey and case crime No. 63/07 under Sections 194, 196, 177, 130(1)/207 M.V. Act was also

registered and the Driver of the Truck, Suresh Giri was also arrested. Learned A.G.A. on the basis of instructions received from the investigating

officer submitted that the statement of witnesses Jai Prakash, Naim Khan and Sunil Raikwar were recorded and they also mentioned the name of

the petitioner.

9. We have considered the rival contentions of the learned Counsels for the parties and also perused the first information report.

10. From the perusal of the F.I.R it cannot be said that no cognizable offence is made out. It is a settled position of law that where the allegations

made in the F.I.R. if taken at their face value and accepted in its entirety do not make out a cognizable case, the proceedings can be interfered

with. The impugned first information report prima facie discloses commission of cognizable offence.

11. The Apex Court in the case of *Rajesh Bajaj Vs. State NCT of Delhi and Others*, has held that "If factual foundation for the offence has been

laid in the complaint the court should not hasten to quash criminal proceedings during investigation stage merely on the premise that one or two

ingredients have not been stated with details. For quashing an FIR (a step which is permitted only in extremely rare cases) the information in the

complaint must be so bereft of even the basic facts which are absolutely necessary for making out the offence. In *State of Haryana v. Bhajan Lal* 1

this Court laid down the premise on which the FIR can be quashed in rare cases. The following observations made in the aforesaid decisions are a

sound reminder: (SCC p. 379, para 103)

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with

circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or

genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an

arbitrary jurisdiction on the court to act according to its whim or caprice.

12. We also do not find any substance in the submission of the counsel for the petitioner that the report should be quashed because it has been

lodged in order to wreak vengeance due to political reasons and the report is malafide. The first information report cannot be quashed on the

ground of malafide or it has been lodged on the ground of political enmity.

13. The Apex court in the case of *State of Karnataka Vs. M. Devendrappa and Another*, has held that "when information is lodged at the police

station and an offence is registered, then the malafide of the informant would be of secondary importance, it is material collected during the

investigation and the evidence led in court which decide the fate of the accused persons. The allegations of malafide against the informant are of no

consequence and cannot by themselves be the basis for quashing the proceedings "".

14. Again in the case of *Prakash Singh Badal* 2007 SCC 193 the Apex Court has held that an investigation should not be shut out at the thresh

hold because a political opponent or a person with political background difference raises the allegation of commission of an offence.

15. We have also perused the orders staying the arrest of the petitioner in two earlier F I R s passed by this court in which one of us (I. Murtaza.

J.) was also a member. In both the cases allegations against the petitioner were only connected with his professional duties and it was observed

that ""considering the fact that the petitioner is a practicing lawyer and he has been representing co-accused and the fact that there is no allegation

that petitioner was in any manner involved in the abduction and torture of respondent No. 4 and that he has no other connection with co-accused

except that of counsel and client, and his case is distinguishable from the case of other co-accused persons, this petition is disposed of finally with a

direction that arrest of the petitioner in the aforesaid case shall remain stayed during investigation provided he cooperates with the investigation.

But the facts of this case are altogether different and the allegations in the impugned first information report are not even remotely connected with

his professional duties.

16. In this case after the registration of the case the looted articles have been recovered by the police and also statements of the witnesses were

recorded in which the name of the petitioner has been mentioned and it cannot be said that there is no allegation against the petitioner to attract the

commission of cognizable offence. The Apex Court in the case of Union Of India v. B.R. Bajaj reported in (1994) SCC 777 has held that at the

stage of the FIR the courts should refrain from interfering when the FIR discloses the commission of a cognizable offence and statutory power of

police to investigate can not be interfered with in exercise of the inherent power of the court.

17. In view of the above no interference is required and the petition is dismissed.

18. However, it is provided that in case the petitioner surrenders within ten days from today, his application for bail shall be decided expeditiously

in accordance with law.