

**(2007) 08 AHC CK 0226**

**Allahabad High Court**

**Case No:** None

Khan Saulat Hanif

APPELLANT

Vs

State of U.P. and Shri Ramesh  
Chandra Jain

RESPONDENT

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**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

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**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 6f 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 Shankergarh 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 Shankergarh 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 Kaiaya 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 extraordinary 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. Attentions 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 staved 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.