
Chandrapal Singh Vs State of U.P. and Another

Criminal W.P. No. 949 of 1996

Court: Allahabad High Court

Date of Decision: March 25, 1996

Acts Referred:

Constitution of India, 1950 " Article 21, 22(1), 226#Criminal Procedure Code, 1973 (CrPC)
" Section 482#Penal Code, 1860 (IPC) " Section 223, 420, 468#Police Act, 1861 " Section 29

Citation: (1996) 20 ACR 498

Hon'ble Judges: R.N. Ray, J; N.L. Ganguly, J

Bench: Division Bench

Advocate: P.C. Srivastava, for the Appellant; A.G.A., for the Respondent

Judgement

N.L. Ganguly, J.

A police Constable Chandrapal Singh filed this writ petition for issuing an order for direction in the nature of certiorari

quashing the F.I.R dated 24.1.96 in case Crime No. 7 of 1996 under Sections 223, 420, 468, I.P.C. and Section 29 of Police Act, 1861 P.S.

Piswa, District Aligarh.

2. The copy of the First Information Report dated 24.1.96 Annexure 1 to the writ petition was lodged by Sri V.K. Misra, Superintendent of

Police, Khair, District Aligarh against Sri K.P. Singh. S.O., P.S. Piswa, and the Petitioner Chandrapal Singh, besides one constable Kamal Singh

of the same police station.

3. The informant Superintendent of Police stated in the First Information Report that Sri K.P. Singh, S.O. of P.S. Piswa went to the house of the

informant and informed him on 30th August, 1995 that notorious criminal Bhura alias Lala s/o Gulab Singh had been arrested alongwith a stolen

motor cycle. He also stated that the accused had disclosed and confessed that he had committed several other thefts and also stating to get the

stolen vehicles recovered. After reaching the said information, the informant himself reached the police station and interrogated the accused Bhura

alias Lala. The said accused on interrogation disclosed that he had committed theft of several vehicles from Districts Bharatpur, Agra and Delhi and

took them to the local area of P.S. Piswa. The informant Superintendent of Police directed the Station Officer Incharge of the police station to

proceed and recover the stolen vehicles on pointing out by the accused. He also directed that the accused be kept in the lock up. On 31st of

August, 1995 when the informant made enquiries from the Station Officer, Incharge of P.S. Piswa, he told that he was despatching the challan after

necessary entries. On 2.9.95 again the Station Officer Incharge of police station went to the informant's residence and informed that accused

Bhura alias Lala escaped from the police station alongwith the handcuffs and rope in between the night of 1st and 2nd September, 1995. After

receiving the said information, the informant made enquiries and found that at the time of the escape by the accused in custody, constable Kamal

Singh was on sentry duty and constable Chandrapal Singh was in the office on duty. The perusal of the record of the police station shows that

there was no entry of admission of Chandrapal Singh accused at the police station and also there was no mention in the records about the escape

of the such accused from the police station nor there is any entry in the general diary or any record that there was any shortage of handcuff and the

rope, instead an entry was made in the record of the general diary of the police station that there was some encounter in which accused Bhura ran

away and the recovery of the motor cycle was shown. The reports stated that the station officer Sri K.P. Singh, constable Chandrapal Singh and

constable Kamal Singh were responsible for dereliction and performance of their duties and false entries were made in the record showing

encounter and no entry about the shortage of handcuff and rope was made in the general diary or any record. In the circumstances, the report was

lodged for necessary action.

4. The learned Counsel for the Petitioner submitted that no case was made out against the Petitioner. He also submitted that there was no

documentary proof for the allegations made in the F.I.R. He relied that the record dated 2.9.96 general diary entry, copy annexed as Annexure 4,

showed that the accused Bhura alias Lala had escaped from the village Bhujaka on 2.9.95 in dead hours. He also argued that it was not the duty of

the Constable Moharrir (Petitioner) for keeping a watch on the locker room where the culprit was detained. He also submitted that at the time of

the alleged escape of the accused or registering of the case, the Petitioner was not present in the police station nor he was on duty.

5. The learned Counsel for the Petitioner argued the case at sufficient length on 14.3.96. The Court was not satisfied and proceeded to dictate the

order when the learned Counsel for the Petitioner submitted that he had not been heard properly. He submitted that there are reported cases which

if taken into consideration, the petition could not be dismissed summarily. The Petitioner's learned Counsel had not brought any case law with him

to make his submission and after argument for about 40 minutes, stated that the writ petition be dismissed as not pressed. The court declined to

dismiss it as not pressed after the arguments were advanced for about 40 minutes. The learned Counsel for the Petitioner submitted that he may be

granted an indulgence to cite the case laws and Full Bench decision. It was directed that the writ petition may be put up next day.

6. The learned Counsel for the Petitioner cited Ram Lal Yadav v. State of U.P. and Ors. 1989 ACC 181, which is a decision by the Full Bench of

5 Hon"ble Judges laying the law that High Court has no inherent powers u/s 482, Code of Criminal Procedure to interfere with the investigation by

the police. The High Court has also no inherent powers u/s 482, Code of Criminal Procedure to stay the arrest of an accused during the

investigation. It was laid down that if the first information report does not disclose the commission of an offence and investigation of the case on the

basis of such report is liable to be quashed under Article 226 of the Constitution and not in exercise of powers u/s 482, Code of Criminal

Procedure. He also cited Union of India and Ors. v. B. R. Bajaj and Ors. 1994 ACC 157. The Hon"ble Supreme Court in the said decision was

pleased to observe:

This inherent power conferred by Section 482 of the Code should not be exercised to stifle a legitimate prosecution. The High Court being the

highest court of a State should normally refrain from giving a premature decision in a case wherein the entire facts are extremely incomplete and

hazy, more so when the evidence has not been collected and produced before the Court and the issues involved whether factual or legal are of

great magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard

to the cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. This Court in State of

Haryana v. Ch. Bhajan Lal to which both of us were parties have dealt with this question at length and enunciated the law listing out the

circumstances under which the High Court can exercise its jurisdiction in quashing proceedings.

The learned Counsel for the Petitioner also cited the decision in State of Haryana v. Chaudhari Bhajan Lal 1991 (28) SCC 111 (SC).

7. The learned Counsel for the Petitioner also cited Joginder Kumar v. State of U.P. and Ors. 1994 (XXXI) ACC 431 and submitted that the right

of a citizen is amply protected and the rights are inherent in Articles 21 and 22(1) of the Constitution and require to be recognised and scrupulously

protected. For effective enforcement of these fundamental rights, the Hon"ble Supreme Court held as under:

1. An arrested person being held in custody is entitled, if he so requests to have one friend, relative or other person who is known to him or likely

to take an interest in his welfare told as far as is practicable that he has been arrested and where is being detained.

2. The Police Officer shall inform the arrested person when he is brought to the police station of this right.

3. An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power must be held to flow

from Articles 21 and 22(2) and enforced strictly.

It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied

with.

The learned Counsel also cited Smt. Chand Dhawan Vs. Jawahar Lal and others, . The Supreme Court in the said case was pleased to hold that

for quashing the complaint, on an additional material filed by the accused, was not justified.

8. The learned Counsel lastly submitted the decision in Dr. Vinod Kumar v. State of U.P. 1995 ACC 375 (FB) and submitted that the High Court

has wide powers under Art, 226 of the Constitution to issue directions commanding the authorities to comply with the rights conferred by the

Constitution.

9. After hearing the learned Counsel for the Petitioner at length and perusal of the case laws cited, we are of the view that none of the cases cited

by the learned Counsel is of any help to the Petitioner's case. The learned Counsel without examining the applicability of the cases to the

controversy in the present writ petition cited the said rulings. The law, as enunciated in the aforesaid decisions, is well-settled and the Court was

rightly not inclined to interfere in the writ petition. It is unfortunate to observe that it is now a tendency developing to address the Court till such time

unless the Court accepts whatever the Counsel says. It is also unpleasant to remark that the learned Counsel when stands to argue a case, is

expected to be fully equipped and prepared with the case and should possess all the relevant case laws, which he intends to rely. The Counsel in

the manner if postponed the decision of the petition, as has been done, the litigant's time and the time of the court is wasted.

10. After a perusal of the F.I.R., it cannot be said that no criminal case under Sections mentioned in the F.I.R., is prima facie made out against the

Petitioner. Whether the Petitioner was present at the police station at the relevant time or whether his alibi, as stated, is acceptable is not to be

examined at this stage. The defence and other circumstances which may be of any use of the Petitioner, is not relevant when the Court is

considering about the prayer for quashing of the F.I.R. under Article 226 of the Constitution.

11. The writ petition is dismissed summarily.