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Court : Allahabad

Decided On : Feb-18-1992

Reported in : 1993CriLJ2083

Judge : K.C. Bhargava, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 482; [Constitution of India](#) - Article 136

Appeal No. : Criminal Misc. Case No. 203 of 1992

Appellant : Ashok Kumar Singh and ors.

Respondent : The State of U.P. and ors.

Disposition : Petition dismissed

Judgement :

ORDER

K.C. Bhargava, J.

1. This is a petition under Section 482, Cr. P.C. for quashing the FIR and for directing that the petitioners be not arrested during the investigation. The petition is opposed.

2. Heard the learned counsel for the petitioners and the learned Additional Government Advocate.

3. Learned counsel for the petitioners has argued that in proceedings under Section 482, Cr. P.C. the Court has ample power to stay the arrest of the petitioners. In support of his contention the learned counsel for the petitioners placed reliance on the case of State of Bihar v. P. P. Sharma, AIR 1991 SC 1260 .: (1991 Cri LJ 1438). A perusal of this case goes to show that it is no authority for the proposition that the arrest of an accused can be stayed in proceedings under Section 482, Cr. P.C. Learned counsel for the petitioners has argued that by implication this power vests in the court under Section 482, Cr. P.C. From a perusal of this case law, it does not go to show that this court by implication has also any power to stay the arrest of an accused.

4. Reliance has also been placed on the case of Delhi Judicial Service Association, Tis Hazari Court, Delhi v. State of Gujarat, AIR 1991 SC 2176: (1991 Cri LJ 3086). In this case also there is no observation of the Hon'ble Supreme Court that the arrest of an accused can be stayed under the provisions of Section 482, Cr. P. C. during the course of investigation. In that case the Hon'ble Supreme Court acted under the provisions of Article 136 of the [Constitution of India](#), but in that case also the Court had not stayed the arrest of the accused but has quashed the proceedings pending against him. No doubt, it is true that the Court has power to quash proceedings at the stage of the FIR when no offence is made out from the FIR and on certain other grounds which have been laid down by the Hon'ble Supreme Court in different case laws.

5. A reference may be made to the case of Ramlal Yadav v. State of U.P., 1990 All LJ 47: (1989 Cri LJ 1013). The Full Bench of seven Judges of this Court has ruled in this case that during investigation the Court has no power under Section 482, Cr. P.C. to stay the arrest of an accused. This observation of the Full Bench has not been overruled by the Hon'ble Supreme Court in any of the cases referred to by the learned counsel for the petitioner. Learned counsel for the petitioner could not produce any authority of the Supreme Court to show that the Court possesses power to order stay of arrest of the petitioners under the provisions of Section 482,

Cr. P.C. Therefore, this argument of the learned counsel for the petitioners cannot be accepted.

6. The next contention of the learned counsel for the petitioners is that the FIR does not disclose any offence. To support this argument he has argued that the present FIR has been lodged after a delay of 28 days and further that an FIR was previously lodged by the accused of this case against the complainant. No doubt, it is true that the incident took place on 29-12-1991 and the FIR was lodged on 26-1-1992. Even accepting that there is delay in lodging the FIR in this case, it cannot be said that the allegations mentioned in the FIR are false and no case is made out, against the petitioners. It is further argued that a previous FIR was also lodged by the accused of this case against the complainant and this shows the falsity of the case of the complainant. From this fact by itself it cannot be said, at this stage, that the FIR is false. All these facts have to be gone into during the course of investigation and if charge-sheet is submitted then these facts can only be established during the course of trial of the case and this Court, at this stage, cannot say that the FIR which has been lodged in the present case against the petitioner is false. No such inference can be drawn on the basis of the two facts which have been pointed out by the learned counsel for the petitioners. A perusal of the FIR goes to show that it does disclose commission of offence and as such the FIR cannot be ordered to be quashed.

The petition has no force and it is dismissed.

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