

Manoj Prabhakar Vs. State of U.P. and Others

Manoj Prabhakar Vs. State of U.P. and Others

SooperKanoon Citation : sooperkanoon.com/482226

Court : Allahabad

Decided On : Jul-20-2000

Reported in : 2000(4)AWC2622

Judge : J.C. Gupta and ;U.S. Tripathi, JJ.

Acts : [Constitution of India](#) - Article 226; [Indian Penal Code \(IPC\), 1860](#) - Sections 406, 420 and 471; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 41 (1) and 157

Appeal No. : C.M.W.P. No. 4232 (MB) of 2000

Appellant : Manoj Prabhakar

Respondent : State of U.P. and Others

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Prashant Kumar, Adv.

Judgement :

J.C. Gupta and U.S. Tripathi, JJ.

1. Heard petitioner's counsel and the learned A.G.A.
2. This writ petition has been filed by Sri Manoj Prabhakar for quashing the first information report dated 9.8.1999, on the basis of which Case Crime No. 1444 of

1999 under Sections 420, 406 and 471, I.P.C. has been registered at P. S. Haldwani, district Nainital against the petitioner and two others.

3. The prosecution story as narrated in the first information report is that about 1-1/2 years ago the petitioner along with Sri Divya Nautlyal and Sri Umesh Chand came to the shop of the complainant and persuaded him to invest money in APACE Savings & Mutual Benefit (India) Ltd. telling him that he would get ten per cent interest and after a period of fifteen months, the rate of interest would be three per cent per month on the deposited amount. The complainant induced by the said allurements of the petitioner and his companions opened two accounts in the aforesaid company and deposited Rs. 50 per day for 15 months. When co-accused Umesh Chand did not come to collect instalments, the complainant went to the office of the company and found that the same has been closed. Neither his money nor interest was refunded to him. It is specifically alleged that the petitioner and his co-associates have dishonestly misappropriated his money amounting to Rs. 35,000 approximately by deceitful means.

4. Learned counsel for the petitioner in support of his arguments for quashing the first information report submitted that the petitioner had no concern whatsoever with the affairs of the aforesaid company, as he was holding no post therein. He was simply holding the post of Managing Director of Naturence Research Labs (P) Ltd.. having its registered office at A-91 Malviya Nagar, New Delhi. He invited applications for appointment of Marketing Agents for sales, marketing and distribution of his company's cosmetic goods. Several applications were received and finally, the Board of Directors of his company selected the name of M/s. Apace Marketing Ltd. He has never been inducted as Director or Agent of Apace Savings and Mutual Benefit (India) Ltd. According to petitioner's counsel, the first information report has been lodged with totally false, fabricated and concocted allegations.

5. Learned A.G.A.. on the other hand, argued that since first information report discloses commission of cognizable offence, the petitioner has no case for getting the same quashed.

6. It is well-settled that power of quashing first information report or criminal proceeding at its inception should be exercised very sparingly and with circumspection and that too in rarest of rare cases, while examining the question, it is not Justifiable for the Court to embark upon an enquiry, as to the reliability or genuineness or otherwise of the allegations made in the first information report and extraordinary jurisdiction conferred on this Court under Article 226 of the [Constitution of India](#) does not permit it to act in an arbitrary or capricious manner. It is not permissible for this Court to examine those allegations meticulously. While examining the question whether the case falls within the category of 'rarest of rare' cases, the Court first has to go into the grip of the matter, whether the allegations constitute the offence. At this stage, it is not for the Court to weigh the pros and cons of the prosecution case. In support of this view, we may refer to a few decisions of the Apex Court. State of Haryana v. Bhajan Lal and others, AIR 1992 SC 604 : Mustaq Ahmad v. Mohd. Habiburrahman, JT 1996 (1) SC 656 : Roopan Deal Bajaj and another v. Kunwar Pal Singh Gill, JT 1995 (7) SC 299 and State of Kerala v. O.C. Kuttan and others. JT 1999 (1) SC 486.

7. Again in the case of Prattbha Rani v. Suraj Kumar and others, (1985) 2 SCC 370. it was held by the Supreme Court that the High Court has no Jurisdiction to examine the correctness or otherwise of the allegations made in the first information report and it will have to proceed entirely on the basis of the allegations made in the first Information report.

8. In the backdrop of this settled legal position, we have closely examined the allegations made in the present F.I.R. and we are of the view that no sufficient ground has been made out in the present case. which may warrant interference of this Court at the investigation stage and no case is made out for quashing the first information report.

9. It was also submitted by the petitioner's counsel that since the petitioner, a cricketer of repute, has engineered the 'match fixing scam' several persons are annoyed with him and, therefore, at their instance, he has been falsely implicated by connecting his name with M/s. Apace Group of Companies. It will suffice to state that the allegations made in the writ petition in this regard are too vague,

ambiguous and Incomplete to be given any credence. To bring a case within the ambit of. 'mala fide', the allegations should be succinctly clear, unambiguous and prima facie believable. In the present case from the allegations made in the petition, it is not at all possible for us to draw any Inference of mala fide. Moreover, there is nothing on record to show even remotely that the first informant was in any way concerned or connected with the match fixing episode or was under the influence of any person against whom match fixing charge has been levelled by the petitioner.

10. Relying upon the decision of Apex Court in Joginder Kumar's case. (1994) 4 SCC 260. it was urged by the petitioner's counsel that the arrest of the petitioner should be stayed till the submission of charge-sheet. This decision was considered by this Court in Full Bench decision in Criminal Misc. Writ Petition No. 5795 of 1998 decided on 17.9.1999, Satpal and others v. State of U. P. and it was held that in appropriate cases, if the Court is convinced that the power of arrest will be exercised wrongly or mala fide or in violation of Section 41(1)(a) of the Code of Criminal Procedure, writ of mandamus can be Issued restraining the police from misusing its legal power. However, the order staying arrest may be granted sparingly in exceptional cases and with circumspection that too in rarest of rare cases keeping in mind that any relief. interim or final during investigation, which has the tendency to slow down or otherwise hamper the investigation should not be granted.

11. Section 41(1) of the Code of Criminal Procedure makes a provision as to in what circumstances, a police officer may arrest an accused without the order of Magistrate or without a warrant. Clause (a) of this sub-section provides that any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists, of his having been so concerned, may be arrested by police without a warrant. Section 157, Cr. P.C. lays down the procedure for investigation and empowers the Investigating Officer to take measures for the arrest of the offender. The Full Bench in the case of Satpal and others (supra), observed :

'.....There is no doubt that arrest is a part of investigation, the police or the investigating agency has every authority to investigate a case where cognizable offence has been reported. But while exercising power of arrest, they are required to be satisfied about the genuineness of bona fides of the allegations of the complaint and about the necessity of arrest of the person concerned. In other words, there must be reasonable Justification for effecting such arrest, which is necessary for the proper investigation.'

12. As already pointed out above, the question of examining truthfulness or otherwise of the allegations made in the first information report is not to be gone into by this Court in these proceedings as the same is to be determined by the Investigating Agency during investigation. We hope and trust that the Investigating Agency while making investigation shall act honestly, fairly and independently in accordance with the above mentioned observations of the Full Bench decision.

13. For the reasons stated above, the writ petition is dismissed.

14. Learned counsel for the petitioner then made a prayer that leave to appeal to Supreme Court be granted. In our opinion, it is not a fit case for grant of leave to appeal. Accordingly, the oral prayer of the learned counsel is refused.