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Court : Allahabad

Decided On : Mar-30-2001

Reported in : 2001CriLJ2888

Judge : Binod Kumar Roy And ;Lakshmi Bihari, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 323; [Constitution of India](#) - Article 226(3)

Appeal No. : Cri. Misc. W. P. No. 1530 of 2000

Appellant : Dheerendra Kumar Alias Bhangoo and ors.

Respondent : State of U.P. and ors.

Advocate for Def. : Sudhir Mehrotra, A.G.A., ;Kamal Krishna and ;S.K. Garg, Adv.

Advocate for Pet/Ap. : R.C. Yadav, Adv.

Judgement :

ORDER

Binod Kumar Roy, J.

1. Through this application, the applicants, who were petitioners of Criminal Misc. Writ Petition No. 1530 of 2000, pray to recall the order dated 29th September,

2000 passed by one of us (Lakshmi Bihari, J.) and P. K. Jain, J. dismissing the writ petition as having become infructuous. They allege, inter alia, that no information was given to their counsel about the listing of the case in the computer list dated 29-9-2000 nor had even the complainant or his counsel even informed him that the case would be taken up on that date; that the matter being still investigated by the C.B.C.I.D. Sectionor, Varanasi, which till date has not submitted any charge-sheet and therefore, the Court had wrongly dismissed the writ petition as having become infructuous.

2. Criminal Misc. Writ Petition No. 1530 of 2000 was filed by the applicants for quashing that decision of the State Government by which it had decided to get the investigation done by the local police in place of C.B.C.I.D. communicated by Sri Sanjiv Kumar, Joint Sectionetary of the Government, vide his letter dated 1-3-2000 to the Additional Director General of Police, C.B.C.I.D. appending its copy as Annexure 7, impleading (i) the State of U. P., (ii) Superintendent of Police, Jaunpur/Sector Officer, C.B.C.I.D. Varanasi; (iii) Station Officer, Police Station Newarthiaya, District Jaunpur and (iv) the Informant Rai Saheb Singh, as Respondents Nos. 1 to 4 respectively, on grounds of malafide of the local M.P. belonging to the ruling B.J.P. party enumerated in the writ petition. A prayer was also made through a separate application to stay the operation of the decision aforementioned as well as their arrest pursuant to the F.I.R. dated 27-10-1999, registered as Case Crime No. 149 of 1999 under Sections 302 and 323 I.P.C., Police Station Newarhiya, District Jaunpur during the pendency of the writ petition.

3. The writ petition was placed for the first time before a Division Bench on 29-3-2000 and following order was passed on that day:

Respondents Nos. 1 to 3 are represented by learned A.G.A.

Let notice be issued to respondent No. 4 returnable in six weeks. Counter-affidavit may be filed by the date fixed.

Till the next date of listing operation of the impugned order dated 1-3-2000 (Annexure 7) and further action pursuant thereto shall remain stayed.

4. A bare perusal of the aforementioned order leaves no manner of doubt that the operation of the impugned order and further action pursuant thereto were stayed only till the next date of listing of the writ petition.

5. On 1st May, 2000 a Counter-Affidavit was filed by Respondent No. 3 - the Station Officer, Police Station, Newarhiya, stating inter alia, that the allegations made in the F.I.R. were found correct against the petitioners, that after recording statements of the witnesses and collecting evidence against the accused persons,, charge-sheet dated 6-11-1999 was submitted appending its copy as Annexure C.A. 1; the investigation was done according to law and there was no error in the same; the petitioners have obtained stay order by misguiding this Court; the State Government has got jurisdiction to have its choice in regard to the investigating agency; that neither the petitioners nor the complainant have any right to get the case investigated by the agency of their choice; the petitioners have not turned up with clean hands and the stay order be vacated and the writ petition is liable to be dismissed.

6. The Informant-Respondent No. 4 - filed a Counter-Affidavit and a Stay Vacation Application after serving their copy on the learned counsel for the petitioners on 19th July, 2000. The aforementioned Stay Vacation Application along with the Counter-Affidavit was directed to be listed with previous papers on 9th August, 2000 vide order dated 28th July, 2000. In the Counter-Affidavit, it has been stated, inter alia, that prior to filing of this writ petition a Criminal Misc. Writ Petition was filed by the petitioners before the Lucknow Bench of the Court challenging the order dated 1-3-2000, which was numbered as Misc. Writ Petition No. (MB) 483 of 2000 and therefore, it is completely wrong to say that this is the first writ petition before this Court.

7. Admittedly, the writ petition was listed thereafter on various dates but the interim order passed on the first date was not extended. We do not find from the record that any prayer was even made by the petitioners for extension of the interim order. In terms of express provisions of Article 226(3) of the [Constitution of India](#) due to non-disposal of the Stay Vacation Application by this Court the interim order automatically stood vacated.

8. The orders dated 21-8-2000, 25-8-2000, 29-8-2000 and 31-8-2000 show that none appeared on behalf of the petitioners. The orders dated 20-9-2000 and 21-9-2000 show that on these dates also the learned counsel did not appear. The Court, however, adjourned the case on both the occasions as the lawyers were on strike. The Computer List of the Court is circulated to the Bar Association.

9. Sri Ramesh Chandra Yadav, the learned counsel appearing in support of this application, contended that he was not aware of the listing of the writ petition nor had anyone informed him of its listing; that the finding recorded by this Court that the writ petition has become infructuous is incorrect inasmuch as no charge-sheet was submitted by the C.B.C.I.D. and in fact none has been submitted till date. In the writ petition, malafide of the local M.P. of the Ruling B.J.P. party at whose behest the Chief Minister had withdrawn his earlier order, required adjudication by this Court, in the interest of justice. Thus, it would be in the interest of justice to recall the order dated 29th September, 2000.

10. Sri Sudhir Mehrotra, the learned A.G.A., on the other hand, contended as follows :-

The interim relief granted to the petitioners was made operative only till the next date of listing of the writ petition and despite listing of the writ petition it was never extended. Besides in terms of the express provisions as contained in Article 226(3) of the Constitution, the interim order stood automatically vacated because of non-disposal of the Stay Vacation Application filed by Respondent No. 4 within the time mentioned in the aforementioned provision. The police has statutory right of investigation who after investigation had already proceeded to submit charge-sheet even before filing of the writ petition coupled with the additional fact the charge-sheet has also been accepted by the Court concerned and the writ petition, in terms of Full Bench decision of this Court in Ram Lal Yadav v. State of U. P. (1989) 15 All LR 279 : (1990 All LJ 47) was correctly dismissed as having become infructuous. Neither the Chief Minister nor the alleged M. P. of the Ruling B.J.P. Party were impleaded as party Respondents and thus, the writ petition was bad for defect of their non-impleadment and thus, it will be in the interest of justice not to recall the order dismissing the writ petition.

11. Sri Yadav very fairly concedes the factual and legal position that neither the Chief Minister nor the alleged M.P., against whom malafides were alleged, were impleaded as party Respondents.

12. The Full Bench, reliance on which has been placed by Sri Mehrotra, has laid down that the writ proceedings become infructuous after the submission of the charge-sheet. Sri Yadav does not dispute the factual position that after submission of the charge-sheet the original Court has also taken cognizance.

13. Thus, we do not find sufficient reason to recall the order dismissing the writ petition of the applicants. Consequently, this Recall Application is dismissed.

14. The Registry is directed to find out as to whether the petitioners had moved the Lucknow Bench of this Court by filing a writ petition as stated in the counter-affidavit of Respondent No. 4 and if it comes to a conclusion that the petitioners had moved the Lucknow Bench of the Court earlier then it will put up the matter under heading 'To be mentioned' for considering the desirability of drawing up proceeding in contempt against the petitioners and/or to launch prosecution against the petitioners for swearing false affidavit, who had claimed prima facie falsely that the aforementioned writ petition is the first writ petition.

15. The office is directed to hand over a copy of this order within issue to Sri Sudhir Mehrotra, learned A.G.A.