

Rajeev Kumar Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Jun-23-2008

Reported in : 2009CriLJ142

Judge : Vinod Prasad and ;Ajai Kumar Singh, JJ.

Appellant : Rajeev Kumar

Respondent : State of U.P. and ors.

Disposition : Appeal dismissed

Judgement :

Vinod Prasad, J.

1. The two petitioners Rajeev Kumar and Bibhav Kumar are the charge sheeted accused of case crime number 55 of 2007 (Case No. 5859 of 2007), under Sections 353, 504, 506 IPC, police station Sector 20, NOIDA, District Gautam Budh Nagar vide Annexure No. 9 to this writ petition. C. J. M. Gautam Budh Nagar has taken cognizance of the offence on 5-7-2007 and registered Case No. 5859 of 2007, State v. Rajeev Kumar and Ors. and have summoned the accused persons vide his order dated 5-7-2007 fixing 5-8-2007 for their appearance. Hence, this writ petition by the petitioner with the prayer to issue writ order or direction in nature of oertiorari quashing of all proceedings emanating from FIR of Crime No. 55 of 2007 (Case No. 5859 of 2007) for the aforesaid offences vide Annexure No. '9 to this

writ petition. The ancillary prayer is to direct respondent authorities to compensate the petitioners for loss of their life and' personal liberty on account of their illegal detention on 25-1-2007 to be determined and fixed by this Court as demanded in paragraph 35 of the writ petition, which has been quantified as Rs. 3,00,000/- (Rs. Three lac).

2. Sri Ravi Kiran Jain, learned senior counsel argued the petition on Behalf of the petitioners and the learned AGA in opposition.

3. At the very outset of this writ petition the question which cropped up for adjudication was that if the petitioners have got an alternative efficacious or speedy remedy of challenging the summoning order by filing a revision or an application under Section 482 Cr. P.C. why we should entertain this writ petition? The said question was mooted for our consideration because of the preliminary objection raised by learned AGA that the petitioners have got an alternative statutory remedy under Section 397(1) read with 401(1) Cr. P.C. as well as under Section 482 Cr. P. C. and therefore, this Court should not exercise its extraordinary jurisdiction under Article 226 of The Constitution of India. Allowing the litigants to eschew the statutory remedy available to them and invoke the writ jurisdiction of this Court will saddle the dockets of this Court with unsurmountable load of writ petitions to an unmanageable limits, which should not be encouraged. Corollary of the argument is that before this Court exercise extraordinary power under Article 226 of the Constitution of India, petitioners should be relegated to exhaust all the statutory alternative remedies. Learned AGA contended that possession of power is one thing and exercise thereof is quite another. Even though there is no dearth in exercising writ power but it should not be exercised to circumvent equally efficacious speedy and effective statutory remedy.

4. On the said mooted question, we have heard Sri Ravi Kiran Jain, learned, senior counsel on behalf of the petitioners and learned AGA in opposition.

5. Sri Ravi Kiran Jain, learned Counsel vehemently argued that Section 482 Cr. P. C. is not an efficacious remedy as under Section 482 Cr. P. C. High Court cannot grant compensation for an illegal detention, which compensation has been claimed by him as the secondary relief in this writ petition, the primary relief being quashing

of charge sheet and the proceedings. Sri Jain contended that in view of the law laid down in *M/s. Pepsi Foods Limited and Anr. v. Special Judicial Magistrate and Ors.* : 1998 CriLJ1 , alternative remedy is not an absolute bar in exercise of extraordinary constitutional, power under Article 226 of the Constitution of India. Sri Jain contended that writ power has been conferred on the High Court to prevent abuse of the process of any Court or otherwise to secure the ends of justice. He submitted that nomenclature is not material and therefore, the instant writ petition should not be thrown out on the ground of alternative remedy. He further submitted that for the reasons quoted above. Section 482 Cr. P. C. is not the efficacious remedy and therefore, the writ petition be entertained.

6. Learned AGA on the other hand contended that Section 482 Cr. P. C. is the inherent power vested in this Court to do ex debito justice. He refuted the arguments of learned senior counsel for the petitioners and submitted that since the petitioners can seek effective remedy under Section 482 Cr. P. C. wherein they can even refer to the evidences collected during investigation by the police and therefore, they should be relegated to alternative remedy as now the charge sheet has been submitted against the petitioners and in this writ petition no material collected during investigation has been appended which was an indispensable necessities to consider grant of primary relief prayed for. Quashing of chargesheet require analyzing the evidences collected during investigation to come to a definite conclusion that no offence of any kind whatsoever is made out against the petitioners and therefore, this writ petition bereft such materials should not be entertained. Concludingly, he contended that the writ petition be dismissed on the ground of efficacious alternative statutory remedy.

7. We have considered the arguments raised by both the sides on the question of maintainability of the writ petition.

8. By a plethora of decisions by the Apex Court and by this Court the law has been crystallized that alternative remedy is not a bar to exercise writ power under Article 226 of the Constitution of India. It has been held in very many judgments with binding precedents by the Apex Court that in suitable cases where the remedy in other statutes is neither efficacious nor speedy then, to prevent the abuse of the

process of investigation and power of the Courts, High Court can exercise writ power under Article 226 of the Constitution of India. While laying down such a law the Apex Court at the same time has cautioned that in all and sundry cases writ power should not be exercised by the High Courts, Possession of power is quite different from exercise thereof. The grater the power the stricter should be the scrutiny and seldom be its exercise. It is a rule of self restrain rather than law. It has been held that if the petitioners can ventilate their grievances in an alternative statutory forum then High Court should not entertain the writ petition under Article 226 of the Constitution of India. Recently the Apex Court has criticised the tendency of ignoring the statutory remedy and avail the writ power. One of such decision is in respect to get the FIR registered though a writ of Mandamus, which practice has been deprecated by the Apex Court in the case of Sakiri Vasu v. State of U.P. and Ors. 2008 (60) ACC 689: 2008 (1) ALJ 752. Further the Apex Court has held in the decision of Harnek Singh v. Charanjit Singh : AIR 2006 SC52 as follows (Para. 15):

It is true that the High Court exercises a plenary jurisdiction under Article 226 of the Constitution of India. Such jurisdiction being discretionary in nature may not be exercised inter alia keeping in view of the fact that an efficacious alternative remedy is available. (See Mrs. Sanjana M. Wig v. Hindustan Petro Corporation Ltd. : AIR 2005 SC3454).

9. Supreme Court in the case of Musaraf Hossain Khan v. Bhagheeratha Engg. Ltd. : 2006 CriLJ1683 has held as follows:

26. It is no doubt true that in a criminal matter also the High Court may exercise its extraordinary writ jurisdiction but interference with an order of Magistrate taking cognizance under Section 190 of the Code of Criminal Procedure will stand somewhat on a different footing as an order taking cognizance can be the subject-matter of a revisional jurisdiction as well as of an application invoking the inherent jurisdiction of the High Court. A writ of certiorari ordinarily would not be issued by a writ court under Article 226 of the Constitution of India against a Judicial Officer. (See Naresh Shridhar Mirajkar and Ors. v. State of Maharashtra and Anr. 0044/1966 : [1966]3SCR744). However, we are not oblivious of a decision of this

Court in *Surya Dev Rai v. Ram Chander Rai and Ors.* : AIR 2003 SC3044 wherein this Court upon noticing *Naresh Shridhar Mirajkar (supra)* and also relying on a Constitution Bench of this Court in *Rupa Ashok Hurra v. Ashok Hurra* : [2002]2SCR1006 opined that a Judicial Court would also be subject to exercise of writ jurisdiction of the High Court. The said decision has again been followed in *Ranjeet Singh v. Ravi Prakash* (: AIR 2004 SC3892 . It is, however, not necessary to dilate on the matter any further. The jurisdiction of the High Court under Section 482 of Code of Criminal Procedure was noticed recently by this Court in *State of U. P. and Ors. v. Surendra Kumar* : (2005)9SCC161 holding that even in terms thereof, the Court cannot pass an order beyond the scope of the application thereof. In *Surya Dev Rai (supra)*, we may however, notice that this Court categorically stated that the High Court in issuing a writ of certiorari exercises a very limited jurisdiction. It also made a distinction between exercise of jurisdiction by the High Court for issuance of a writ of certiorari under Articles 226 and 227 of the Constitution of India. It categorically laid down that while exercising its jurisdiction under Article 226, the High Court can issue a writ of certiorari only when an error apparent on the face of the record appears as such; the error should be self evident. Thus, an error according to this Court needs to be established. As regards exercising the jurisdiction under Article 227 of the Constitution of India it was held:...The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the Court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.

10. In the decision of *Union of India and Anr. v. Kunishetty Satyanarayan* : AIR 2007 SC906 it has been laid down by the Apex Court as follows:

13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide *Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh and Ors.* : AIR 1996 SC691 , *Special Director and Anr. v. Mohd. Ghulam Ghouse and Anr.* : 2004(164)ELT141(SC) , *Ulagappa and Ors. v. Divisional Commissioner, Mysore and Ors.* 2001 (10) SCC

639 : AIR 2000 SC 3603, State of U. P. v. Brahm Datt Sharma and Anr. : [1987]2SCR444 etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.

11. In view of the above law laid down by the Apex Court the mooted question by the learned AGA no longer remains res integra. Statutory alternative remedy if efficacious must be allowed to be exhausted before the High Court should exercise writ power. The question is not so much of possession of power but exercise thereof.

12. Adverting to the present case without entering into the facts thereof, as no evidence collected during investigation has been appended in this writ, it is the case of the petitioners themselves that they are charge sheeted accused of Crime No. 55 of 2007 for offences under Sections 353, 504, 506 IPC, police station

Sector 20, NOIDA, District Gautam Budh Nagar. The FIR of the aforesaid crime was got registered by Head Constable Mahesh Pal Singh on 25-1-2007 at 5.30 p.m. in respect of an incident occurred on the same day just one and a half hours before at 4.00 p.m. and the place of the incident was the office of Development Authority NOIDA vide Annexure No. 6 to the writ petition. The investigation culminated into the charge sheet. Along with the present petition no material has been appended by the petitioners either in the form of recorded statements under Section 161 Cr. P. C. or in the form of the documentary evidences on the basis of which the Investigating Officer has concluded that petitioners have prima facie committed the aforementioned offences. In absence of the said materials on the basis of which conclusions has been drawn by the Investigating Officer, it will be wholly unjustified and premature for us to conclude that the said conclusion of the Investigating Officer is not right, legal or unjustified. The petitioners, for getting the relief as has been prayed for by them should have appended those materials collected by the police during investigation. Petitioners could have resorted to the power under Section 482 Cr. P. C. appending all the materials available in the case diary to contend that no offence whatsoever is disclosed by the investigation conducted by the police and therefore, the prosecution of the petitioners is mala fide. Further the petitioners without knowing those materials collected during investigation have prayed for quashing of the FIR. They cannot be allowed to raise such a grievance on such a scanty pleading which does not contain the input material. Further we are of the opinion that the case of the petitioners can be considered in the light of the argument raised by them only when they appear in the Court and obtain the copies of the statements in accordance with provisions of the Criminal procedure Code and append them along with their application. We would hasten to add here that we gave an opportunity to Sri Jain to append all the materials contained in the case diary during the course of the arguments but Sri Jain preferred to argue the writ petition on its merit. In such a view, we are of the opinion that this petition, in absence of complete facts, which are relevant and germane to consider the prayer made by the petitioners, is not maintainable.

13. Alternatively also we are of the opinion that since the petitioners have got an efficacious speedy statutory remedy under Section 482 Cr. P. C. or even challenging the summoning order under Section 397(1) read with Section 401(1)

Cr. P. C. that we should not exercise our extraordinary power under Article 226 of the Constitution of India. We do not mean to say that we do not possess such a power but what we impress upon is that Section 482 Cr.P.C. along with Section 397(1) read with Section 401(1) Cr. P. C. are not included in the statute book as ornamental sections to eschew at the convenience of a litigant. Merely because alternative remedy is not a bar in exercise of our power under Article 226 of the Constitution of the India does not mean that we should decide all criminal matters including those cases where charge sheet has been submitted by the police by exercising our writ power moreso when the accused bases his edifice of argument mostly on the defence papers eschewing prosecution evidences altogether. If such an exercise is permitted, the whole procedure for trial will be left at the mercy of the accused, which will be a self defeating unjustified exercise of power. Writ power has been given to the High Courts to prevent abuse to the process of Court in suitable cases where it is required most and not in cases which are based on half materials of disputed questions of facts. It is an equitable remedy and should be exercised when the person claiming such equitable reliefs comes with clean hands, which is not the case here before us.

14. Coming to the contention of Sri Jain, learned senior counsel, on behalf of the petitioners that no compensation can be awarded under Section 482 Cr. P. C. we are of the opinion that the said contention is wholly unmerited. Section 482 Cr. P. C. starts with non obstante clause as the words are 'Nothing in this Code shall be deemed to limit or effect the inherent powers of the High Court to make such orders as may be necessary...or to secure ends of justice.'

15. We lay the emphasis on the words to 'secure ends of justice'. The terminology used in the statute is of unfathomable limits. It is neither circumscribed by any limitation nor can it be interpreted in a limited manner. To secure the ends of justice is much more than to decide cases on legal points. The non obstante clause further makes it clear that the inherent power, which has been preserved with the High Court, is of enormous magnitude. No provision in Criminal Procedure Code can limit exercise of such a power. We fail to understand the reason behind making such an argument by Sri Jain as has been referred to above as ex debito justice include power to grant compensation as well. Sri Jain has failed to convince

us and bring home his said submission to a logical and moreso when Section 357 and 358 Cr.P.C. confers power on the Courts to order for payment of compensation. Section 358 Cr.P.C. goes to the extent of laying down that compensation can be granted for a groundless arrest.

16. We are absolutely clear that to secure the ends of justice the High Court possesses the power to order for compensation and therefore repel the contention of Sri Jain on behalf of the petitioners.

17. For me twin reasons mentioned above, we do not find this writ petition as being maintainable and therefore, dismissed it on the ground of availability of alternative efficacious speedy remedy leaving it to the petitioners that if they want they can ventilate their grievances in the proper statutory form available to them.

This writ petition is dismissed.

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