

Sanjeev Awasthi and Another Vs. State of U.P.

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Court : Allahabad

Decided On : Feb-12-2011

Judge : Rajesh Dayal Khare, J.

Acts : Indian Penal Code (IPC) - Sections 489 A, 489 B; Code of Criminal Procedure (CrPC) (Cr.P.C) - Section 167, 173

Appeal No. : APPLICATION U/S 482 No. - 4344 of 2011

Appellant : Sanjeev Awasthi and Another

Respondent : State of U.P.

Advocate for Def. : Govt. Advocate

Advocate for Pet/Ap. : Sikandar B. Kochar, Adv

Judgement :

1. Heard learned counsel for the applicants and learned G.A. for the State respondent.
2. Supplementary affidavit on behalf of the applicants has been filed in the Court today annexing therewith certified copy of the remand sheet dated 03.02.2011, certified copy of the first information report filed in case crime no. 35 and 36 of 2011, which is being taken on record.

3. The present 482 Petition has been filed for quashing of the proceedings of case crime no. 36 of 2011 under sections 489-A, 489-B IPC, P.S. Collectorganj, District Kanpur Nagar and also for quashing of the remand sheet order dated 03.02.2011.

4. Learned counsel for the applicants has contended that the perusal of the first information report would show that the applicant no. 1 together with applicant no. 2, his driver, are said to have been arrested on 02.02.2011 at 11.00 p.m. near Girja Palace Hotel in Collectorganj area and recovery of Rs.8,01,000/- of counterfeit currency is said to have been made from the applicant.

5. Learned counsel for the applicant has emphasized that as per the First Information Report, when the applicants' car was intercepted by the police, they were searched and Rs.2,57,000/- is said to have been recovered from the pocket of the applicant no. 1 which constituted of notes of rupees one thousand and from the bag which was being carried in the right hand of accused no. 1, an amount of Rs.4,88,000/- was recovered, out of which eighty eight one thousand denomination notes and eight packets of five hundred rupees notes were recovered and when these recovered notes were examined, they were found to be forged. Learned counsel for the applicants has contended that the details of the currency notes so recovered have not been specified, therefore there can be no identification as to which notes were recovered or which notes were forged and therefore, the same can not be read/considered against the applicants.

5. It is argued on behalf of the applicants that the basic foundation of the case against the applicants is the first information report, which is again based on recovery memo, perusal of which shows that Recovery Officer has not given any identity or numbers of the alleged fake notes recovered from the applicants in case crime no. 36 of 2011, which lacuna in the recovery memo/first information report has also been overlooked by the Remand Magistrate. It is further argued on behalf of the applicants that the applicants has been deliberately charged for the offence under Section 489-A and 489-B IPC, which are non-bailable and not under Section 489-C IPC, in which no remand could have been granted.

6. It is next contended by learned counsel for the applicants that the remand sheet dated 03.02.2011, certified copy of which has been filed as Annexure 7, would

show that there was total non-application of mind by the Special Chief Judicial Magistrate, Kanpur Nagar in passing the said order, as it was passed in a most mechanical manner, in a set proforma without application of mind and therefore, the same is in violation of the provisions of section 167 Cr.P.C. It is further argued that no details of the counterfeit currency notes which were recovered from the applicants or the number of the alleged counterfeit currency notes so recovered was placed before the concerned Magistrate at the time of passing of the said order and the learned counsel for the applicants has relied upon the judgement of this Court reported in 1994 ACC Allahabad 720 in the matter of Brij Lal v. State of U.P. in support of his contention and has argued that such counterfeit currency can not be considered as proof against the applicants. It is argued that the learned Magistrate has to record his satisfaction which is to be based on the matter produced before him, including case diary and other documents, which was not done in the present case. It is further argued on behalf of the applicants that the notes alleged to have been recovered, have been planted on the accused due to political vendetta, on account of the fact that the applicants is involved in filing of number of cases against the States' wrong policies including the Taj Corridor case and it is for this reason that he has been victimized. Learned counsel for the applicant has relied upon the judgement reported in AIR 1959 All 384 in the matter of Bir Bhadra Pratap Singh v. D.M. Azamgarh and others and has argued that it is mandatory for the concerned Magistrate to have proceeded in consonance of the provisions of Section 167 Cr.P.C. before passing the order impugned, which has not been done in the present case. He has further relied upon the judgement of the Hon'ble Apex Court reported in 1981 Supreme Court Cases (Criminal) 228 in the matter of Khatri and others v. State of Bihar and others and has argued that the Hon'ble Apex Court had held that jeopardy to the personal liberty of a person arises as soon as he is arrested and produced before the Magistrate, for it is at this stage that he gets the first opportunity to apply for bail and obtain his release and also to resist remand to police or jail custody and it is at this stage that the accused person needs competent legal advice and representation and no procedure can be said to be reasonably fair and just which denies legal advice or representation to him at this stage. It is next contended on behalf of the applicant that his personal liberty and fundamental right guaranteed under Article 21 was

being adversely affected, thus the concerned Magistrate ought to have given him an opportunity and further ought to have followed the procedure as laid down by the law. Learned counsel for the applicant has further argued that for attracting the provisions of Section 489-A and 489-B IPC mens rea is essential to constitute the offence under the charged sections and has relied upon the judgement of Hon'ble Apex Court reported in 2002 Supreme Court Cases (Cri) 758 in the matter of Umashanker v. State of Chattisgarh.

7. Learned counsel for the applicant has next contended that in the present case only provisions of section 489C IPC would be attracted and 489-A and 489-B IPC will not be attracted inasmuch as section 489-A IPC deals with counterfeiting currency notes or being part in the process of counterfeit currency notes which is not so according to the facts of the present case and section 489-B IPC deals with selling, buying or receiving from any other person or otherwise trafficking or using any forged or counterfeit currency notes and has argued that the said provisions will also not be attracted as the only allegation made in the First Information Report against the applicant is with regard to the alleged possession of the counterfeit notes. It is thus argued that only the provisions of section 489-C IPC would be attracted in the present case.

8. Learned Govt. Counsel in reply has argued that perusal of the impugned remand order would show that case diary, application and the recovered notes were placed before the Magistrate, as is evident from the said order and the concerned Magistrate after applying his mind has passed the order impugned. It is further argued on behalf of the State that the order impugned is only an interlocutory order, which is not required to be a detailed order but it should be evident from the order that the relevant documents/case diaries etc. were on record/produced before the Magistrate, which itself would show that the same was considered at the time of passing of the order of remand. Learned Govt. Advocate has relied upon the judgement of the Hon'ble Apex Court reported in 2000 Supreme Court Cases (Cri) 303 in the matter of Kanti Bhadra Shah and another v. State of West Bengal wherein the Hon'ble Apex Court has held that the detailed order may be passed for culminating the proceedings but it is quite unnecessary to pass detailed orders at other stages like stage of issuing process, remanding the

accused to custody, framing of charges, passing over to next stages in the trial, as it would result in causing avoidable delay if detailed orders are required to be passed at every stage. It is thus argued by learned Govt. Advocate that the order impugned is perfectly just, legal and suffers from no infirmity in law, which may warrant any interference by this Court in exercise of powers under section 482 Cr.P.C. He has further argued that the judgement rendered in the case of Brij Lal (supra) would not be attracted in the present case, at this stage, inasmuch as the said judgement was rendered after leading evidence and at the final stage. Learned Govt. Advocate has next contended that the accused does not have any right to be heard prior to submission of report under section 173 Cr.P.C., while in the present case investigation is still in progress, therefore, present case is covered under Chapter 12 Cr.P.C., thus, the accused has no right to be heard during the course of investigation. Reliance in this regard has been placed in the judgement of Hon'ble Apex Court in the case of Union of India and another v. W.N. Chaddha, reported in 1993 SCC (Cri.) 1171 as well as judgment of this Court in the matter of State of U.P. v. Vishwa Vijay, reported in 2010 Vol. 70 ACC 461. It is further argued by the learned Government Advocate that the contention raised on behalf of the applicants that only Section 489-C IPC would apply in the present, cannot be accepted, in view of the fact that the applicants was apprehended along large amount of counterfeit currency notes, while travelling from Kanpur to Lucknow by car, therefore, provisions of Section 489-B IPC will squarely apply in the present.

9. Learned Government Advocate has argued that the contention raised on behalf of the applicants that the order impugned has been passed by the Remand Magistrate without providing any opportunity and without applying his mind and without there being any reason to believe that the currency notes recovered from the applicants were counterfeit currency is unfounded and it is also argued that according to the prosecution, one accused, Shahzadey, was apprehended along with the counterfeit currency at about 4.30 PM on 02.02.2011, for which first information report was lodged in case crime no. 35 of 2011 under Section 489-A and 489-B IPC, P.S. Collectorganj District Kanpur Nagar. It is further argued that Shahzadey was thereafter interrogated by the Investigating Officer and during investigation, he revealed that counterfeit notes recovered from him was given to

him by the applicants in the present case, who was dealing in the business of counterfeit currency notes and also informed the Investigating Officer that the applicants, in the present case, will be returning from Delhi by Flight to Lucknow. Thus, after making the necessary entry in the General Diary, the police party, along with Shahzadey, apprehended the applicants along with huge quantity of counterfeit currency notes amounting Rs. 8.01,000/-, pursuant to which first information report was lodged against the applicants in case crime no. 36 of 2011 under Section 489-A and 489-B IPC. It is next argued that the accused in case crime no. 35 of 2011, i.e., Shahzadey also gave statement under Section 164, Cr.P.C., wherein he has disclosed various mobile numbers of the applicants relating to the conversations regarding the trafficking of the counterfeit currency notes and on that basis, an application has been moved by the prosecution for obtaining call details of the six mobile phones recovered from the possession of the applicants.

10. Learned counsel for the applicants has contended that only material relied by the State was first information report lodged in case crime no. 35 of 2011 and statement of Shahzadey recorded under Section 164, Cr.P.C. in the said case crime number, in which no action has been taken against the applicants, though, he was named in the first information report. It is further contended that the Remand Magistrate, while passing the remand order, could only look into the material of case crime no. 36 of 2011. It is further contended that mere possession of counterfeit currency notes, as alleged, cannot be construed as mensrea and provisions of Section 489-A and 489-B IPC would not be attracted as no presumption with regard to trafficking could be drawn against the applicants. It is further contended that the case relied upon by the prosecution in case of Khatri and others (Supra) can not be applied in the present case, as the same has been passed on the issue of charge or framing of charge.

11. Further, in reply to the arguments advanced by the learned Govt. Advocate, learned counsel for the applicant has contended that the impugned remand order has been passed in a printed format, in a most mechanical manner, without application of mind, as there was nothing on record to show that the alleged currency notes, which were recovered from the applicant were fake notes. It has

further been reiterated that the applicant has been victimized due to political vendetta and the notes alleged to have been recovered have been planted. Learned counsel for the applicant has further submitted that subjective satisfaction of the Magistrate should have been recorded in the order impugned, failing which it would tantamount to violation of the provisions of Section 167 Cr.P.C. as it would show that the procedure, as prescribed under law, has not been followed and therefore, the order impugned can not be sustained.

12. Perusal of the order impugned shows that the case diary, application and recovered counterfeit currency notes were produced before the Magistrate at the time of passing of remand order. When such documents/materials were placed before the Magistrate, then it cannot be said that same were not considered by the Magistrate while passing the order and no adverse presumption can be drawn.

13. Here it is not the case where it is being canvassed that the court below has no jurisdiction to look into the matter but it is a case where this Court is being asked upon to see whether there is any irregular exercise of jurisdiction by the concerned Magistrate. Offence under Section 489-A, B and C IPC are economic crime and not in the line of any ordinary crime and such crimes not only adversely effect the economy of the country but is also crime against society.

14. According to Section 114(e) of the Indian Evidence Act, 1872, there is presumption regarding existence of any fact, which the Court thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case, that judicial and official acts have been regularly performed. It can thus be presumed that judicial act of the Magistrate, while passing the order impugned was done in accordance with the provisions of law, unless proved otherwise.

15. Further more in the present case only case diary and the material of case crime no. 36 of 2011 were produced/considered by the Magistrate while passing the order impugned. In the opinion of the Court, the arguments as raised by the learned Government Advocate with regard to apprehending of Shahzadey, lodging of first information report against him and his statement recorded under Section

164, Cr.P.C. was only to show that the case of the applicants comes within the ambit of Section 489-B IPC, which can be better looked into/considered by the trial judge after investigation/adducing the evidence. At the stage of passing the remand order, the court concerned is the competent court to see that the material collected by the Investigating Officer is sufficient for sending the accused to judicial custody. It is the discretion of the concerned Magistrate to see, on the material/case diary produced before the concerned Magistrate, whether remand should be allowed or refused and this Court cannot usurp the discretion of the Magistrate concerned by going into the said issue. The discretion of the Magistrate cannot be interfered with by this Court at the stage when investigation is still going on. However, in case any date is fixed for such purpose in future and the applicant is brought to the court, the concerned court shall look into the matter by perusing the case diary and other material placed on record by the prosecution for passing any further order by him and it is not proper for this Court to interfere in the matter at this stage. Interference, at this stage, by way of quashing of order impugned or proceedings, as prayed for, would amount to interference with the investigation, which cannot be done.

16. Learned counsel for the applicants has limited his prayer to the extent that the Remand Magistrate may be directed to consider the bail application of the applicants in view of the submissions made by the learned counsel for the applicants.

17. After hearing the learned counsel for the parties and after perusing the averments made in the application and also the order impugned, this Court is of the opinion that no good ground is made out by the learned counsel for the applicant for quashing the remand order dated 3.2.2011 passed by the Metropolitan Magistrate 4, Kanpur Nagar or for quashing the proceedings of case crime no. 36 of 2011. Accordingly, the prayer for quashing the same is hereby refused.

18. However, the present 482, Cr.P.C. application is disposed of with the direction that in case the applicants move an application for grant of bail, his bail prayer shall be considered and decided, expeditiously, in accordance with law, after

hearing the Public Prosecutor, in view of the settled principle of law as laid down by this Court as well as Hon'ble Supreme Court.

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