

Allahabad High Court

Prem Kumar vs State Of U.P. And Others on 23 July, 2010

Court No. - 42

Case :- CRIMINAL MISC. WRIT PETITION No. - 13128 of 2010

Petitioner :- Prem Kumar

Respondent :- State Of U.P. And Others

Petitioner Counsel :- S.K. Gupta

Respondent Counsel :- Govt. Advocate

Hon'ble Imtiyaz Murtaza,J.

Hon'ble Naheed Ara Moonis,J.

Heard learned counsel for the petitioner learned A.G.A. appearing for the State.

The relief sought in this petition is for quashing of the F.I.R. registered at case crime no. 410 of 2010 under sections 272/273 I.P.C. and 7/16 the Prevention of Food Adulteration Act, 1954, P.S. Tarawa, district Azamgarh.

The Full Bench of this court in Ajit Singh @ Muraha v. State of U.P. and others (2006 (56) ACC 433) reiterated the view taken by the earlier Full Bench in Satya Pal v. State of U.P. and others (2000 Cr.L.J. 569) that there can be no interference with the investigation or order staying arrest unless cognizable offence is not ex-facie discernible from the allegations contained in the F.I.R. or there is any statutory restriction operating on the power of the Police to investigate a case as laid down by the Apex Court in various decisions including State of Haryana v. Bhajan Lal and others (AIR 1992 SC 604) attended with further elaboration that observations and directions contained in Joginder Kumar's case (Joginder Kumar v. State of U.P. and others (1994) 4 SCC 260 contradict extension to the power of the High Court to stay arrest or to quash an F.I.R. under article 226 and the same are intended to be observed in compliance by the Police, the breach whereof, it has been further elaborated, may entail action by way of departmental proceeding or action under the contempt of Court Act. The Full Bench has further held that it is not permissible to appropriate the writ jurisdiction under Article 226 of the constitution as an alternative to anticipatory bail which is not invocable in the State of U.P. attended with further observation that what is not permissible to do directly cannot be done indirectly. The learned counsel for the petitioner has not brought forth anything cogent or convincing to manifest that no cognizable offence is disclosed prima facie on the allegations contained in the F.I.R. or that there was any statutory restriction operating on the police to investigate the case. Having scanned the allegations contained in the F.I.R. the Court is of the view that the allegations in the F.I.R. do disclose commission of cognizable offence and/therefore no ground is made out warranting interference by this Court. The petition is accordingly dismissed. Order Date :- 23.7.2010 Shahnawaz