Satvindra Singh Alias Sonu vs State Of Uttarakhand And Others on 4 July, 2022

Author: Sanjaya Kumar Mishra

Bench: Sanjaya Kumar Mishra

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition (Criminal) No. 1157 of 2022

Satvindra Singh alias Sonu .....Petitioner

-Versus-

State of Uttarakhand and others .....Respondents

Present: Mr. S.K. Mandal, learned counsel for the petitioner.
Mr. Yogesh Pant, learned counsel for the caveator.
Mr. J.S. Virk, learned Deputy Advocate General with Mr. R.K. Joshi, learned Bri
for the State.

Date of Hearing and Judgment: 04.07.2022

Sri Sanjaya Kumar Mishra, J.

1. Heard learned counsel for the parties.

2. By filing this writ petition (criminal), the petitioner has prayed for issuance of a writ of Certiorari quashing the FIR Case Crime No. 137 of 2022 under Section 323, 427, 504 and 506 of the Indian Penal Code, 1860 (hereinafter referred to as "the Code" for brevity) P.S. Khatima, District Udham Singh Nagar dated 05.06.2022. It is brought to our notice that at the time of argument of the case on merits by the learned Deputy Advocate General that in the meantime, the offences under Section 307 and 341 of the Code have been added and there is every possibility of adding the offence under the provisions of the Arms Act, 1959 perhaps after the custodial interrogation.

3. The complainant lodged an FIR stating there in that there is dispute between him and the petitioner. On 04.06.2022 at about 10:00 pm when he was returning home in his Alto car, on the road, he was obstructed by the petitioner and he was assaulted and the car was damaged, then he fired at him/complainant but he ran through agricultural fields, because of darkness, the petitioner could not commit murder of the complainant. On such report, the FIR as stated above, has been registered.

4. At this stage, the learned counsel for the petitioner would argue that the complainant has filed a false FIR against the petitioner because of the dispute between them regarding payment of money with respect to the property. He has also relied upon an FIR lodged by the police against the complainant regarding initiation of a false criminal case against another person by tempering with the evidence.

5. We have carefully examined the records as well as the submissions made by the counsel appearing for the parties. It is not disputed at this stage that an FIR has been made by the complainant and his statement under Section 161 of the Code of Criminal Procedure, 1973 has been recorded by the Investigating Officer, wherein he has specifically implicated the petitioner and has stated that he was assaulted, his car was damaged and was fired at. There appears to be certain lack of details like description of the weapon of offence through which the alleged shot was fired at the complainant but it is apparent that shot was fired, from a fire arm at the complainant.

6. At this stage, in fact, the learned Deputy Advocate General on instructions would submit that in course of investigation, the Investigating Officer found the car of the complainant to be damaged and that he seized two empty cartridges from the spot. Of course, the investigation has not concluded as yet. The petitioner has neither been arrested nor he has appeared before the Investigating Officer.

7. The learned counsel for the petitioner would rely upon the reported case of "M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others (2021) SCC Online SC 315" wherein the Hon'ble Supreme Court has issued direction regarding disposal of application under Section 482 of the Code and also application filed under Article 226 of the Constitution of India. To take note, few of the observations which are applicable to this case, this Court is aware that the police have a statutory right and duty under the relevant provisions of Chapter XIV of the Code to investigate into a case of cognizable offence. It is further held that it is only in cases, where non-cognizable offence or offence of any kind in the First Information Report, the Court will not permit an investigation to go on. Further, while examining an FIR, quashing of which is sought, the Court cannot embark upon an inquiry as to reality or genuineness or otherwise, the allegations made in the FIR of the complainant. Quashing of complaint/FIR should be an exception rather than a rule. However, at the same time, the Court if thinks fit regard being held to the parameters of quashing and self-restrain before by law, more particularly with parameters laid down by the Hon'ble Supreme Court in the case of "R.P. Kapur Vs. State of Punjab AIR 1960 SC 866" the Court has jurisdiction to quash the FIR of the complainant. When a prayer quashing the FIR is made by the alleged accused and the Court when it exercises power under Section 482 of the Code or under Article 226 of the Constitution of India only has to be considered whether the allegations in FIR disclose of

commission of a cognizable offence or not. The Court is not required to consider it on merits of the allegations make out a cognizable offence and the Court has to permit the Investigating Agency-police to investigate into the allegations made in the FIR.

In this case, the learned counsel for the petitioner submits that the contents of the FIR are false because of certain other conciliations. He does not point out any inherent lacuna in the FIR or does not say that the FIR making such allegations which on the face of it, is improbable. Moreover, as we have already mentioned in the preceding paragraphs that the allegations made by the complainant in the FIR is supported by the fact that during course of investigation, the car of the complainant was found damaged and two empty cartridges were found from the spot. Therefore, we are of the opinion that it is not a case where the FIR should be quashed at the initial stage. The learned counsel for the petitioner has not made out a case where a refusal to quash the FIR lodged against the petitioner would manifestly lead to miscarriage of justice. In that view of the matter, we are not inclined to quash the FIR.

8. The other substantial question of law, which is raised, in this regard is that the offence under Section 506 is non-cognizable in the State of Uttarakhand, as the Central statute does provide the offence under Section 506 of the Penal Code, as a non-cognizable and bailable offence. However, it is further seen that by virtue of U.P. Amendment Act, 1961, the offence under Section 506 has been made not only cognizable but also non-bailable.

9. Learned counsel for the petitioner would argue that since this amendment has not been incorporated by any order passed under Section 87 of the Uttar Pradesh Reorganization Act, 2000, the offence will be held to be non-cognizable and bailable offences. He would submit that in the initial stage, as the offence under Sections 307 and 341 IPC were not inserted in the formal FIR, the Police exceeded its jurisdiction in investigating the case.

10. Learned counsel for the State as well as for the complainant, on the other hand, would submit that the question of application of the Uttar Pradesh Amendment or the laws that are applicable to the State of Uttar Pradesh before the reorganization of the State in 2000 to the territorial area of the State of Uttarakhand has already been set at rest and it is no more res-integra. They would rely upon reported case of "Suman Devi and others vs. State of Uttarakhand and others (2021) 6 SCC 163". In order to appreciate the entire contention, we have taken into consideration the provisions of Section 86, 87 and 88 of the U.P. Reorganization Act, 2000, which are reproduced below:-

> "86. Territorial extent of laws.--The provisions of Part II shall not be deemed to have affected any change in the territories to which the Uttar Pradesh Imposition of Ceiling of Land Holding Act, 1961 (U.P. Act 1 of 1961) and any other law in force immediately before the appointed day, extends or applies, and territorial references in any such law to the State of Uttar Pradesh shall, until otherwise provided by a competent Legislature or other competent authority be construed as meaning the territories within the existing State of Uttar Pradesh before the appointed day.

87. Power to adapt laws.--For the purpose of facilitating the application in relation to the State of Uttar Pradesh or Uttaranchal of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority. Explanation.--In this section, the expression "appropriate Government" means as respects any law relating to a matter enumerated in the Union List, the Central Government, and as respects any other law in its application to a State, the State Government.

88. Power to construe laws.--

Notwithstanding that no provision or insufficient provision has been made under section 87 for the adaptation of a law made before the appointed day, any court, tribunal or authority, required or empowered to enforce such law may, for the purpose of facilitating its application in relation to the State of Uttar Pradesh or Uttaranchal, construe the law in such manner, without affecting the substance, as may be necessary or proper in regard to the matter before the court, tribunal or authority."

11. In the case of "Suman Devi and others vs. State of Uttarakhand and others (2021) 6 SCC 163"

the Hon'ble Supreme Court, after taking into consideration the entire scheme of the Act especially, provisions quoted above, has come to the following conclusion: (paragraph nos. 27, 28 and 29 of the aforesaid judgment):

"27. By virtue of Section 28 of the Reorganization Act, the newly established Uttarakhand High Court had the jurisdiction, powers and authority in respect of the law in force, immediately before the appointed day, which was exercisable by the Allahabad High Court.

28. A comprehensive reading of the provisions of the Reorganization Act would show that the laws in force in the erstwhile state of UP continued to remain operative upon the creation of the new state of Uttarakhand. Section 87 only had the effect of obliging the state and the courts to thereafter enforce the existing laws, to the extent they were modified within a period of 2 years from the date of commencement of the Reorganization Act. If the appellants are correct, the mere omission of a law or regulation in the adaptation order, would have the disastrous effect of creating a vacuum in regard to existing laws that are not specifically mentioned. In other words, the power to adapt only meant that such laws which required some modifications or adaptation, could be so modified or adapted within the period defined i.e. 2 years. In the absence of any such exercise of adaptation or modification, all the laws, rules,

regulations and statutory orders that were in force in the state of UP applied without any change.

29. This court holds to be unmerited, the arguments of the appellant that the state was bound by the criteria specified in the advertisement issued by it in March 2016, even though Clause 7 of that notification clearly specified that the recruitments for ANMs would be in accordance with the statutory rules. The omission to mention the relevant qualifications (i.e. intermediate or equivalent qualification with the science stream) did not relieve the state from its obligation to follow existing rules. It has not been disputed that the 1997 Rules, after amendment in 1998, mandated that candidates desirous of being recruited as ANM or Health Workers had to possess educational qualifications including Intermediate pass (or its equivalent) with the science stream, apart from the necessary ANM certificate course. That condition remained unchanged even after the creation of the State of Uttarakhand. It was only in 2016, after the advertisement for the recruitment concerned was published, that the rules were changed; the changed new rules relieved the requirement of having to qualify the Intermediate level with science subjects, for the period 2010-2013 and thereafter, after July 2016. For all other periods, the basic educational qualification of intermediate or equivalent pass with a mandatory science stream qualification, remained an essential condition. Therefore, the argument that the state was bound by the standards it specified (in the advertisement which had omitted any mention as to the educational qualification of intermediate with science) did not relieve the state from the obligation of enforcing statutory rules. It is too late in the day to assert that any kind of estoppel can operate against the state to compel it to give effect to a promise contrary to law or prevailing rules that have statutory force. All arguments to this effect on the part of the appellants are therefore rejected. Furthermore, it is useful to recollect that the eligibility of a candidate or applicant for a public post or service, is to be adjudged as on the last date of receipt of applications for such post or service, in terms of the relevant advertisement, and the prevailing service rules. This position is recognized by settled authority; in Ashok Kumar Sharma v. Chander Shekhar a three-judge bench of this court ruled, in this context that:

"6... The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all.

An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it."

12. It is borne out from the record that the power to adapt only meant that such laws which required some modifications or adaptation could be so modified or adapted within a period defined i.e. 2

years. In the absence of any such exercise of adaptation and modification, all the laws, rules, regulations and statutory orders that were in force in the State of Uttar Pradesh applied without any change to the State of Uttarakhand.

13. In that view of the matter, this Court is of the opinion that the amendment to Code of Criminal Procedure by the Uttar Pradesh Legislature making the offence under Section 506 of the Penal Code to be non-bailable and cognizable is also applicable to the State of Uttarakhand within its territorial boundaries. This argument of learned counsel for the petitioner that the offence under Section 506 of the Code is non-cognizable offence in the State of Uttarakhand would not hold water.

14. The learned counsel for the petitioner also tried to distinguish the ratio, by resorting to the fact that the said law relates to service jurisprudence and is not applicable to the criminal cases. Such argument is not only fallacious but also unreasonable. In the sense that the Hon'ble Supreme Court in the case of "Suman Devi and others vs. State of Uttarakhand and others (2021) 6 SCC 163" has enunciated the general law relating to applicability of the rules, acts, enactments and amendments carried out by the Uttar Pradesh Legislative Assembly to the State of Uttarakhand on reorganization. So, be it criminal trial or be it service jurisprudence or be it matter relating to civil adjudication, the law enunciated in the aforesaid judgment i.e. "Suman Devi and others vs. State of Uttarakhand and others (supra) is applicable to all cases.

15. Finally, the learned counsel for the petitioner would rely upon Paragraph nos. 15 and 16 of "M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra (supra) and argue that even if the FIR is not quashed, the balance has to be maintained between the two aspects and the Court should grant some kind of protection to the petitioner, so he can appear before the Investigating Officer and after presentation of his case and hearing the petitioner and complainant, the Investigating Officer should decide to arrest the petitioner or not. The observation is also not acceptable to us because of the vary paragraphs that have been relied upon by the learned counsel for the petitioner in the case of Neeharika's judgment militates against such a course of action.

16. For the purpose of better appreciation, we take note of the exact language used by the Hon'ble Supreme Court in the aforesaid case criticizing the course adapted in some decisions by the High Courts in granting order of stay without assigning any reasons. Paragraphs 15 and 16 of M/s Neeharika's judgment are quoted below:-

> "15. As observed hereinabove, there may be some cases where the initiation of criminal proceedings may be an abuse of process of law. In such cases, and only in exceptional cases and where it is found that non interference would result into miscarriage of justice, the High Court, in exercise of its inherent powers under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India, may quash the FIR/complaint/criminal proceedings and even may stay the further investigation. However, the High Court should be slow in interfering the criminal proceedings at the initial stage, i.e., quashing petition filed immediately after lodging the FIR/complaint and no sufficient time is given to the police to investigate into the allegations of the FIR/complaint, which is the statutory right/duty of the police

under the provisions of the Code of Criminal Procedure. There is no denial of the fact that power under Section 482 Cr.P.C. is very wide, but as observed by this Court in catena of decisions, referred to hereinabove, conferment of wide power requires the court to be more cautious and it casts an onerous and more diligent duty on the court. Therefore, in exceptional cases, when the High Court deems it fit, regard being had to the parameters of quashing and the self-restraint imposed by law, may pass appropriate interim orders, as thought apposite in law, however, the High Court has to give brief reasons which will reflect the application of mind by the court to the relevant facts.

16. We have come across many orders passed by the High Courts passing interim orders of stay of arrest and/or "no coercive steps to be taken against the accused" in the quashing proceedings under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India with assigning any reasons. We have also come across number of orders passed by the High Courts, while dismissing the quashing petitions, of not to arrest the accused during the investigation or till the chargesheet/final report under Section 173 Cr.P.C is filed. As observed hereinabove, it is the statutory right and even the duty of the police to investigate into the cognizable offence and collect the evidence during the course of investigation. There may be requirement of a custodial investigation for which the accused is required to be in police custody (popularly known as remand). Therefore, passing such type of blanket interim orders without assigning reasons, of not to arrest and/or "no coercive steps" would hamper the investigation and may affect the statutory right/duty of the police to investigate the cognizable offence conferred under the provisions of the Cr.P.C. Therefore, such a blanket order is not justified at all. The order of the High Court must disclose reasons why it has passed an ad-interim direction during the pendency of the proceedings under Section 482 Cr.P.C. Such reasons, however brief must disclose an application of mind.

The aforesaid is required to be considered from another angle also. Granting of such blanket order would not only adversely affect the investigation but would have far reaching implications for maintaining the Rule of Law. Where the investigation is stayed for a long time, even if the stay is ultimately vacated, the subsequent investigation may not be very fruitful for the simple reason that the evidence may no longer be available. Therefore, in case, the accused named in the FIR/complaint apprehends his arrest, he has a remedy to apply for anticipatory bail under Section 438 Cr.P.C. and on the conditions of grant of anticipatory bail under Section 438 Cr.P.C being satisfied, he may be released on anticipatory bail by the competent court. Therefore, it cannot be said that the accused is remediless. It cannot be disputed that the anticipatory bail under Section 438 Cr.P.C. can be granted on the conditions prescribed under Section 438 Cr.P.C. are satisfied. At the same time, it is to be noted that arrest is not a must whenever an FIR of a cognizable offence is lodged. Still in case a person is apprehending his arrest in connection with an FIR disclosing cognizable offence, as observed hereinabove, he has a remedy to apply for

> anticipatory bail under Section 438 Cr.P.C. As observed by this Court in the case of Hema Mishra v. State of Uttar Pradesh, (2014) 4 SCC 453, though the High Courts have very wide powers under Article 226, the powers under Article 226 of the Constitution of India are to be exercised to prevent miscarriage of justice and to prevent abuse of process of law by the authorities indiscriminately making pre-arrest of the accused persons. It is further observed that in entertaining such a petition under Article 226, the High Court is supposed to balance the two interests. On the one hand, the Court is to ensure that such a power under Article 226 is not to be exercised liberally so as to convert it into Section 438 Cr.P.C. proceedings. It is further observed that on the other hand whenever the High Court finds that in a given case if the protection against pre-arrest is not given, it would amount to gross miscarriage of justice and no case, at all, is made for arrest pending trial, the High Court would be free to grant the relief in the nature of anticipatory bail in exercise of its powers under Article 226 of the Constitution of India, keeping in mind that this power has to be exercised sparingly in those cases where it is absolutely warranted and justified. However, such a blanket interim order of not to arrest or "no coercive steps" cannot be passed mechanically and in a routine manner."

17. Thus, this Court is of the opinion that when it comes to the conclusion that the contentions raised by the petitioner through his counsel are not acceptable, it will not be appropriate for granting any kind of order of stay of arrest of the petitioner, which is the absolute domain of the Investigating Agency, without having proper materials to come to the conclusion that FIR itself should be quashed. While dismissing the criminal writ petition under Article 226 of the Constitution of India, the Court should not pass any order for protection in favour of the petitioner.

18. Therefore, this Court has come to the conclusion that there is no merit in the writ petition, accordingly, the same is dismissed.

(Sanjaya Kumar Mishra, J.) 04.07.2022 A/-