

Court No. - 67

Case :- CRIMINAL MISC. WRIT PETITION No. - 19192 of 2023

Petitioner :- Rajendra Bihari Lal And 6 Others

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Anuj Srivastava

Counsel for Respondent :- G.A.

Hon'ble Rahul Chaturvedi,J.

Hon'ble Mohd. Azhar Husain Idrisi,J.

Heard Sri Anuj Srivastava, learned counsel for the petitioners, Sri A.K.Mishra, learned Advocate General assisted by Sri P.C. Srivastava, learned Additional Advocate General, Sri A.K.Sand, Government Advocate and Sri Ghanshyam Kumar, learned Additional Government Advocate appearing for the State and perused the records.

The instant writ petition is being filed by the seven petitioners, namely, (i) Most Rev. Prof.Rajendra Bihari Lal, (ii) Smt. Rekha Patel, (iii) Prof. Ramakant Dubey, (iv) Sri Vinod Bihari Lal, (v) Prof.Smt. Ranu Prasad, (vi) Rev. David Philipps and (vii) Sri Sunil Kumar John. All the petitioners are jointly invoking the extra ordinary powers of this court enshrined under Article 226 of the Constitution of India with the prayer :-

“I. Issue a writ, order or direction in the nature of certiorari for quashing the first information report dated 04.11.2023 as case crime no. 0395 of 2023, under Sections 328, 376D, 365, 506 IPC, Section 3/5(1) of U.P. Prohibition of Unlawful Conversion of Religion Act, 2021 and section 5 of Immoral Traffic (Prevention) Act, 1956, Police Station-Bewar, District- Hamirpur.

II. Issue an order or direction in the nature of mandamus directing the respondent not to arrest the petitioners in case crime no. 0305 of 2023, under Sections 328, 376D, 365, 506 IPC, Section 3/5(1) of U.P.Prohibition of Unlawful Conversion of Religion Act, 2021 and section 5 of Immoral Traffic (Prevention) Act, 1956, Police Station-Bewar, District- Hamirpur.

III. Issue a writ, order or direction, which this Hon’ble Court may deem fit and proper under the facts and circumstances of the case; and

IV. Award the cost of the writ petition to the petitioner.”

Thus from the aforesaid, it is clear that a writ of certiorari was prayed for quashing of the FIR dated 04.11.2023 having case crime no. 305 of 2023, P.S. Bewar, District Hamirpur and also writ of mandamus as an ancillary writ seeking a direction from this Court to the respondent authorities not to arrest

the petitioner named above pursuant to the above case crime at P.S. Bewar, Hamirpur.

Coming to the Factual Aspect of the issue, it has been contended that though the FIR was registered way back on 04.11.2023 at police station Bewar, Hamirpur but the investigation yet to see the final day and the investigating officer is yet to file his report under Section 173(2) Cr.P.C..

The respondent no.4 is the informant as well as victim of the case. After reading the contents of the FIR, it has clearly been culled out that the victim has suffered lots of atrocities mental as well as physical by the hands of petitioners-accused. There was a yawning gap between the financial, social status of the accused-petitioners vis-a-vis the respondent no.4 and as such she was subjected to mental and physical atrocities by the petitioners. Every sentence of the FIR is a sad saga of the atrocities faced by the respondent no.4/victim during this period and she was not permitted to open her mouth as the accused-petitioners are head and shoulders above in all the aspect of the life. Any how after mustering much of the courage, she has succeeded in lodging the present FIR on 04.11.2023 at police station Bewar, District Hamirpur.

As mentioned above, the Petitioner No.1 is the Vice Chancellor of Sam Higginbottom University of Agriculture Technology and Science (SHUATS), Deemed University Naini, District Prayagraj; Petitioner No.2 Rekha Patel is an Office Assistant in Central Library of the above institution; Petitioner No.3 is the Public Relation Officer (PRO) of SHUATS, Naini, Prayagraj; Petitioner No.4 is present Director (Administration) SHUATS, Naini, Prayagraj; Petitioner No.5 is Registrar and Officiating Vice Chancellor of SHUATS, Naini, Prayagraj; Petitioner No.6 is the Director Rural Education of the institution and lastly Petitioner No.7 is a Personal Assistant to the Registrar, SHUATS, Naini, Prayagraj.

Learned counsel for the petitioner while denying the allegation contained in the FIR submits that no offence whatsoever is being made out against the petitioner. Learned counsel for the petitioners have also submitted, that for the incident said to have been taken place in November 2005, the present FIR was registered on 04.11.2023 of which there is no plausible justification is coming forward to explain this inordinate delay. It is further contended by the learned

counsel for the petitioners, that respondent no.4 was employed on a contractual appointment as a Stenographer (Hindi) in the Directorate of (HRM&R) SHUATS on a consolidated salary of Rs. 8000/- p.m. on 11.07.2014. It is alleged by learned counsel for the petitioners that Dr. Robin L. Prasad, Registrar, SHUATS have terminated her services from 30.06.2022.

Aggrieved by this illegal termination, respondent no.4 has approached this Court by means of Writ-A No. 13888 of 2022 (Saroj Kumar Vs. Union of India and 5 others). The Single Bench of this Court has sought a short counter affidavit in order to put the record of the straight and decide the matter. It is alleged that this order was passed on 13.10.2022 and almost after a year, she has succeeded in lodging the impugned FIR on 04.11.2023 under Sections 328, 376D, 365, 506 IPC and Section 3/5(1) of U.P. Prohibition of Unlawful Conversion of Religion Act, 2021 and Section 5 of the Immoral Traffic (Prevention) Act) 1956. Thus there is no proximity between two incidents.

From the FIR, it has surfaced that the respondent no.4 is an alumina of Allahabad University and has completed her B.A. in November 2005. During her student days, she met another girl Rekha Patel, who used to allure her fellow girls by providing lots of gifts and other articles of their choice. The respondent no.4 belongs to the lower middle class, was also trapped in ploy/trap of Rekha Patel, who has taken her to Yeshua Tabernacle Church in Muirabad, where Pastor Ivan Dass, R.B. Lal, Imtiyaz Ahmad, David Philip, Vinod B. Lal and Ramakant Dubey were already present. It is urged by learned AGA that this was a typical mode operandi of any Church to get the girl converted and imbibing the Christianity.

The tender mind of respondent no.4 was brain washed by the higher priest of the church and persuaded her to adopt Christianity by offering her a job. So that her future would be secure and she would be regularly attending the church.

In addition to this, from 11.11.2005 the wrath of the R.B.Lal @ Baba Ji came to her at the SHUATS Campus and her body and soul were crushed and thereafter she was subjected to regular sexual exploitation by the accused-petitioners. The accused-petitioners are formidable opponents to her and she cannot utter a single word against their might. Not only this, they have managed to marry her at Kashi Vishambhar Satkar Bhawan, Katra to already

married man, namely, Vijay Kumar, who has a child. Not only this, the petitioners have persuaded and pressurized her to bring women for conversion and for other illegal work. On 08.11.2005 at Yeshua Tabernacle Church in Muirabad a certificate of Baptism was given to her by Ivan Dass. After being baptised she was offered a job on 11.07.2014 as mentioned above. In the year 2021 levelling a wild allegation upon the respondent no.4 that she has cheated the sum to the tune of Rs. 5.50 lacs from one Satish Kumar in lieu of providing him a Govt. Appointment at SHUATS in the year 2019. It is alleged that some in-camera inquiry was conducted and she was sacked from her service in the year 2022. It is urged by the learned counsel for the petitioners that by way retaliation she has tailored a story as mentioned in the FIR, just to rope in all the higher officials of SHUATS including the Vice- Chancellor.

Learned counsel for the petitioners drawing the attention of the Court to the judgement of Hon'ble Apex Court ***State Of Haryana And Ors vs Ch. Bhajan Lal And Ors*** decided on **21 November, 1990** reported in **1992 AIR 604**. The relevant extract of the judgment is quoted here in below:-

“(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence just- i7 on and this case does not call for the exercise of extraor- dinary or inherent powers of the High Court to quash the F.I.R. itself.”

Per Contra, Sri Ajay Kumar Mishra, learned Advocate General, has cited another judgement in the case of ***Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others*** reported in **AIR 2021 SC 1918**.

Conclusions:-

23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or “no coercive steps to be adopted”, during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what

circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;*

xiii) *The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;*

xiv) *However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;*

xv) *When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;*

xvi) *The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court*

shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”

We have heard the rival submission with rapt attention and also perused the pleadings in the writ petition and the annexures in support thereof. It is beyond doubt that the allegation levelled in the FIR are extremely serious and horrifying that the accused-petitioners have exploited her financial position and allured her to change the side and have succeeded and thereafter prevailed upon her. No God or true Church or Temple or Mosque would approve such type of malpractices. If someone on his own, have chosen to get him converted to different religion is totally another aspect of the issue. In the instant case prevailing upon a tender mind of a young girl providing gifts, clothings and other physical amenities and then asked her to get her baptised is an unpardonable sin. No true religion on the earth would endorse such type of malpractices by the priest or the Godmen. Besides this, allegation levelled in the FIR is not only abhorring but distasteful, whereby she has narrated

her sad story of sexual exploitation. We are at the pre-natal stage of the case and after reading the allegation made therein, we cannot shut our eyes closed and install the investigation of the case as contemplated in the judgement of **Neehrika Infrastructure (supra)** that the police has got a statutory rights and duty under the relevant provisions of Cr.P.C. under Chapter XIV of the Code to investigate into the cognizable offence and the court should shun away to thwart any investigation into the cognizable offence. It is only in the cases, where no cognizable offence or offence of any kind is disclosed in the FIR that court would not permit an investigation to go on. The powers of quashing should be exercise in the “rarest of the rare case” sparingly and in exceptional circumstances, as mentioned above in the month of November 2023, she has succeeded in lodging the FIR. Indeed there is delay in lodging of the FIR, but as compare with the allegation made therein we are unable to except the contention raised by the counsel for the petitioners that there is inordinate delay in lodging of the FIR. As mentioned above, there is no level play ground between the contesting parties. Her opponents’ are formidable ones. All these are subject matter of investigation and this could not be a ground of quashing of FIR. Learned counsel for the petitioners has submitted that the present FIR is driven by the malafides as she has been sacked from her services and as such by way of retaliation she has lodged the present FIR. As mentioned above, she was sacked in the year 2022 and she has succeeded in lodging the FIR in the year November 2023 and therefore there is no close proximity between sacking from her service in 20th June 2022 and lodging of the present FIR in November 2023.

Lastly, she has recorded her 164 Cr.P.C. statement before the learned Magistrate on 06.11.2023, in which she has reiterated and

reaffirmed the allegation made upon by the accused-petitioners. The quantum of threat extended to her by the accused-petitioners is apparent from her 164 Cr.P.C. statement. Infact, the 164 Cr.P.C. statement of the victim is sad saga faced by her. The bundle load of atrocities upon whereby she was constantly subjected to all sorts of harassment but she was asked not to dare and open her mouth or make a complaint. At this stage, it would be unjust and improper to stall the investigation by the police. This a brutal and heinous crime against woman. Infact, it is too far to imagine that for a sake of retaliation a lady would put her dignity and honour to the stake and make it public, just to falsely implicate the accused-petitioners. For a lady, dignity and honour is a valuable and non-negotiable asset. However, we are not making any verdict upon the final outcome of the investigation, we are expecting that the S.P.,Hamirpur would personally supervise the investigation done by the three senior Police Official of the C.O. rank of Hamirpur, after holding investigation with utmost transparency and objectively would conduct an investigation and probe into the matter to its core within specific time frame, say about within 90 days from today, and submit a report under Section 173(2) Cr.P.C. before concerned Magistrate.

Since the petitioners are an accused of heinous offence, we direct that they should surrender before the Majesty of the Court on or before 20.12.2023 and apply for regular bail. The bail application of the accused petitioner shall be heard and decided by the court concerned thoroughly on merits as expeditiously as possible unaffected by the any of the observation made above. Similarly, the S.I.T./I.O. of the case too would not sway away by any of the observation made above, and come to the conclusion after thrashing the material collected during investigation.

Under circumstance we are afraid to quash the FIR and gag the investigation proceeding at this primitive stage, where after reading the FIR a serious cognizable offence is made against the accused-petitioners.

With the aforesaid observation, the present Crl. Misc. Writ Petition stands dispose of.

Order Date :- 11.12.2023

Abhishek Sri.