

Court No. - 66

Case :- APPLICATION U/S 482 No. - 15817 of 2020

Applicant :- Prof. Brij Bhushan Singh And 11 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Irfan Chaudhary, Swetashwa Agarwal

Counsel for Opposite Party :- G.A.

Hon'ble J.J. Munir.J.

1. This application under Section 482 of the Code of Criminal Procedure, 1973¹ has been instituted to quash the proceedings of Criminal Case No. 3099 of 2020 (arising out of Case Crime No. 603 of 2019), under Sections 342 and 504 of the Indian Penal Code, 1860², Police Station - Civil Lines, District - Aligarh, pending in the court of Chief Judicial Magistrate, Aligarh.

2. Heard Mr. Swetashwa Agarwal, along with Sri Irfan Chaudhary, learned counsel for the applicants and Mr. J.B. Singh, learned Additional Government Advocate-I, appearing on behalf of the State.

3. The short case of the prosecution, that has commenced on a First Information Report lodged by the first informant-opposite party no. 2, Guddu Singh, is to the effect that the informant is employed as a driver for the past ten years in the services of Thakur Dalveer Singh, Member of the Legislative Assembly (M.L.A.) representing the Barauli Constituency in the District of Aligarh. On the 22nd of October, 2019, in the afternoon hours, at 40 minutes past 3 of the clock, he was on way to pick up the M.L.A.'s grandson, Vijay Kumar Singh, from the campus of the Aligarh Muslim University³, where Vijay Kumar Singh is a scholar reading in the B.A. Course (Foreign Languages). The student had to be driven back home. As the informant entered the University gate, a place called "Baab-e-Sayed", a proctorial force of the University, that included men and higher officers, forcibly stopped the informant's vehicle bearing Registration No. UP 81 - BK 4555. The informant was made to step out

1 for short "Code"

2 for short "I.P.C."

3 hereinafter referred to as "University"

of the vehicle and a party flag of the Bhartiya Janta Party (B.J.P.) that was flying on the car, was caused to be removed by the informant by force. The informant protested, but the members of the proctorial team made him remove the flag by force. Later on, the persons assembled there and members of the proctorial team abused him and said that their University had no place for the B.J.P. The informant has gone on to say that the entire episode hurt him badly, and that the act had a tendency to hurt communal feelings. It is said in the F.I.R. that the party is incumbent in the Government, both at the Centre and the State. The act of those forming the proctorial team deserves to be visited with severe action.

4. This F.I.R. led to registration of the crime and investigation. The police, after investigation, have submitted the impugned charge-sheet. A perusal of the charge-sheet shows that the F.I.R. is primarily supported by the version of the first informant in his statement under Section 161 of the Code, besides that of another witness, Vijay Kumar Singh, possibly the grandson of the M.L.A.. Statements of all the 12 accused have been recorded by the Investigating Officer.

5. Mr. Swetashwa Agarwal, learned counsel for the applicant, has impressed upon the Court the fact that of the 12 applicants, applicant nos. 1 to 6 are highly accomplished teachers of the University, with no criminal background. He has referred to certain circulars of the University, banning the use of flagged cars/vehicles of any political party on the University campus. He does not deny the incident of the vehicle being stopped, but disputes the fact that any abusive language was used, as alleged by the second opposite party. He says that those words constituting the impugned prosecution have been falsely imputed to the proctorial team, in order to give a criminal colour to the incident. It is only that the University rules were enforced. It is emphasized that there is no ingredient of illegal confinement made out, though he does not dispute that the other offence under Section

504 I.P.C. is disclosed by ingredients. About the other offence, learned counsel submits that the allegations are incredible. Learned counsel for the applicant has repeatedly impressed upon the Court the fact that the University is an autonomous body, governed by an Act. They have their rules, where they can enforce their own discipline. Learned counsel has also impressed upon the Court the accomplishments of applicant nos. 1 to 6 in the academic field, where imputations of the kind ascribed to them cannot be believed. Mr. Agarwal virtually submits that men of the status of applicant nos. 1 to 6 can just not be accepted to have committed an offence of this kind. The others in the proctorial team acted in aid of the six professors. It is also argued by the learned counsel for the applicants that the Investigating Officer has done a perfunctory investigation and ascribed false statements to the accused, recorded under Section 161 of the Code. It is also submitted that the statement of Vijay Kumar Singh recorded under Section 161 is hearsay, and if transformed to evidence, would be irrelevant.

6. Mr. J.B. Singh, learned A.G.A.-I appearing on behalf of the State, has opposed the motion to admit this application to hearing. He submits that the offence is serious and could have had wide ramifications on the law and order. He submits that whatever material is there in the case diary, discloses a triable case, which ought not to be scuttled by this Court in exercise of its powers under Section 482 of the Code.

7. This Court has given a thoughtful consideration to the matter. There are assertions made on behalf of the applicants that the entire incident, that is basis of the prosecution, is a misrepresented version. The fact that the M.L.A.'s vehicle was intercepted at the University gate, is not in issue. It is also not in issue that all the twelve applicants, including the six professors, were present on the spot, when the vehicle was intercepted. There are definite allegations, together with

material carried in the charge-sheet impugned, that the informant was made to remove the party flag from the M.L.A.'s vehicle, where the applicants, one, more or some of them, reportedly abused him and said that their University had no place for the B.J.P. The employment of these words are not only mentioned in the F.I.R., but also in the statement of the first informant/second opposite party, Guddu Singh. The submission of learned counsel for the applicant is that except the first informant supporting the prosecution case, there is no other witness. The statement of the other prosecution witness, Vijay Kumar Singh, has been castigated as hearsay, and irrelevant. This part of submission of Mr. Agarwal may be right that Vijay Kumar Singh's evidence is hearsay, but the driver's statement is there, and his statement cannot be ignored. After all, it was the driver who was admittedly stopped and caused to remove the flag. It is the applicant's say that the informant was not abused, but made to remove the flag. To that end, the applicants have brought on record certain stills from the video camera recording. It is beyond the accepted scope of this Court's jurisdiction to test the worth of these allegations. The informant was allegedly abused and then had words spoken to his ears, with intent to create enmity, hatred or ill-will between classes. This is a matter to be determined by the Trial Court, particularly when the presence of the applicants, each one of them on the scene of occurrence, is not in dispute. The allegation of statements attributed to the accused, being incorrectly recorded by the Investigating Officer, is also not a matter which this Court can go into in the exercise of its jurisdiction under Section 482 of the Code.

8. This Court notices that the offence under Section 342 I.P.C. may or may not be made out, or some other offence may be disclosed. The offences charged are triable as a summons case, where the framing of a formal charge is not necessary. In this case, this Court is of opinion that the Magistrate ought to look into the matter and

determine precisely on what charges, besides Sections 342 and 504 I.P.C, the applicants ought to face trial.

9. It has been impressed upon this Court that the University is within its rights to prohibit the use of flags on vehicles entering the campus. This prosecution is not about the legality or otherwise of the flag flying on the vehicle, or the legality of the University rules, prohibiting flags of national political parties flying on vehicles entering their campus. It is about the manner in which the flag was caused to be removed and the the words that were uttered by the proctorial team, as claimed by the second opposite party.

10. This Court is of opinion that it is not a matter where proceedings may be terminated, without permitting them to run their due course. There is no abuse of process of court involved or any ground discernible, on the basis of which the impugned proceedings may be quashed.

11. In the result, this application fails and is **rejected**.

Order Date :- 19.11.2020

I. Batabyal