

SUPREME COURT OF INDIA

Naman Singh Alias Naman Pratap Singh

Vs.

State of Uttar Pradesh

CrI.A.No.1620 of 2018

(R.F.Nariman and Navin Sinha,JJ.,)

13.12.2018

ORDER

Navin Sinha,J.,

SLP(CrI.)No.3383 of 2018

1. Leave granted.
2. The appellants are aggrieved by the denial to quash the criminal prosecution against them under Sections 420, 406, 467, 468, 471, 504, 506, 34 IPC in F.I.R. No.22/2018 dated 31.01.2018.
3. Learned counsel for the appellants submits that no objection certificate has been obtained from the Chatrapati Sahuji Maharaj University, Kanpur for establishment of the three-year Law course. Affiliation has also been granted by the University. The appellants have also deposited a sum of Rs.3,50,000/- with the Bar Council of India and await permission from it for starting the law course. The question of any fraudulent misrepresentation by the appellants, persuading students to take admission in an unauthorised institution simply does not arise. Several students have taken admission in full awareness of the existent facts with no grievances and have sworn affidavits to that effect.
4. Learned counsel for the respondents submits that the appellants by misrepresentation and cheating have persuaded respondent no.4 and others to take admission in an unrecognised institution. There are several students who are aggrieved. In any event, such enquiries cannot be held in a quashing application by examining the defence of the appellants. The impugned order merits no interference.
5. We have considered the submissions on behalf of the parties and are satisfied that the application deserves to be allowed, though on different grounds. Respondent no.4 lodged a complaint with the Sub-Divisional Magistrate, Unnao on 31.01.2018 that she had been duped into taking admission in an unrecognised institution. The Sub-Divisional Magistrate, the very

same day, without furthermore, directed the police to register a first information report. The only question for our consideration is whether the Sub-Divisional Magistrate was competent to do so, and whether such an F.I.R. can be said to have been registered in accordance with the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code').

6. Section 154 of the Code provides for registration of a first information report at the instance of an informant, reduced into writing and signed by the person giving it. Section 154(3) stipulates that in the event of a refusal on part of an officer in charge of a police station to record such information, it may be sent in writing and by post to the Superintendent of Police who will direct investigation into the same.

7. Section 190 of the Code provides for taking of cognizance by a Magistrate either on a complaint or upon a police report. Similarly, Section 156(3) provides that any Magistrate empowered under Section 190 may order such an investigation, and which also includes the power to direct the lodgement of an F.I.R. The Code in Section 200 provides for lodging of a complaint before the Magistrate, who after examination of the complainant and witnesses, if any, can take cognizance.

8. It is therefore apparent that in the scheme of the Code, an Executive Magistrate has no role to play in directing the police to register an F.I.R. on basis of a private complaint lodged before him. If a complaint is lodged before the Executive Magistrate regarding an issue over which he has administrative jurisdiction, and the Magistrate proceeds to hold an administrative inquiry, it may be possible for him to lodge an F.I.R. himself in the matter. In such a case, entirely different considerations would arise. A reading of the F.I.R. reveals that the police has registered the F.I.R. on directions of the Sub-Divisional Magistrate which was clearly impermissible in the law. The Sub-Divisional Magistrate does not exercise powers under Section 156(3) of the Code. The very institution of the F.I.R. in the manner done is contrary to the law and without jurisdiction.

9. Nothing prevented respondent no.4 from lodging an F.I.R. herself before the police under Section 154 of the Code or proceeding under Section 154(3) if circumstances so warranted. Alternately the respondent could have moved the Magistrate concerned under Section 156(3) of the Code in the event of the refusal of the police to act. Remedy was also available to the respondent by filing a complaint under Section 200 of the Code before the jurisdictional Magistrate.

10. In view of the scheme of the Code as discussed, we have purposely refrained from going into the merits of the case so as not to prejudice either parties and also keeping in mind the nature of the jurisdiction under Section 482 of the Code. Any application by respondent no.4 hitherto under the Code will therefore have to be considered by the appropriate authority or forum in accordance with law. For the reasons discussed, the impugned order is held to be unsustainable and is set aside. The First Information Report therefore also stands quashed for the reasons discussed, but with liberty as aforesaid.

11. The appeal is allowed.

