

2005 SCC ONLINE ALL 1164 . 2006 ACC 54 354 .

Zeba Khalil And Others v. State Of U.P And Others

Allahabad High Court (Nov 18, 2005)

CASE NO.

Criminal Misc. Writ Petition No. 822 of 2000 and Criminal Misc. Writ Petition No. 5159 of 2002

ADVOCATES

JUDGES

M.C Jain

M. Chaudhary, JJ.

Summary

1. In both the writ petitions the main respondent is Arsi Yusuf (wife) arrayed as respondent No. 4 in Writ Petition No. 822 of 2000 and respondent No. 5 in Writ Petition No. 5159 of 2002.
2. In Writ Petition No. 822 of 2000, the petitioners sought the quashing of the F.I.R dated 30.1.2000 in Case Crime No. 32 of 2000 under sections 498-A/323/504/506/307, I.P.C and 3/4 of Dowry Prohibition Act as well as stay of their arrest.
3. 5. On 11.2.2000 the Court stayed the arrest of the petitioners of Writ Petition No. 822 of 2000 in the aforesaid case crime directing the issuance of notices mid asking for counter and rejoinder affidavits.
4. 8. In Writ Petition No. 5159 of 2002, the quashing of another F.I.R dated 17.8.2002 in Case Crime No. 797 of 2002, under section 498-A I.P.C read, with section 3/4 Dowry Prohibition Act, P.S Kavi Nagar, District Ghaziabad (Annexure-11 to the writ petition) has been prayed for.
5. It is submitted that although a priiha facie, case was made out against the accused/petitioners, but appears that this Court probably relying upon the plea of alibi set up by the petitioners, granted them an order on 11.2.2000 against their arrest, which is filed by the petitioners as Annexure No. 3 to this writ

petition."

6. Both the writ petitions to be dismissed, without any further debate and the law has to take its own course, with regard to the charge-sheets submitted in Court.

7. It has been vehemently argued that advancing the false plea of alibi on the basis of this forged certificate, they succeeded in securing an order of stay of arrest in Writ Petition No. 822 of 2000.

8. As to the observation of the Court in Writ Petition No. 5159 of 2002 while passing the order dated 5.9.2002 that it appeared to be malicious prosecution, the learned Counsel argued that a series of F.I.Rs had been lodged by Arsi Yusuf against her husband and his other family members and all the facts were related by the petitioners in Writ Petition No. 5159 of 2002.

9. 18. In the final result, Criminal Writ Petition No. 822 of 2000 and Criminal Writ Petition No. 5159 of 2002 are hereby dismissed.

JUDGMENT

M.C Jain, J.: These two writ petitions are related to each other and we propose to decide them together.

2. Necessary facts may be stated to get the hang of the controversy. In both the writ petitions the main respondent is Arsi Yusuf (wife) arrayed as respondent No. 4 in Writ Petition No. 822 of 2000 and respondent No. 5 in Writ Petition No. 5159 of 2002. Nadeem Khalil (husband) is petitioner No. 5 in Writ Petition No. 822 of 2000 and petitioner No. 1 in Writ Petition No. 5159 of 2002. Khalil Ahmad Khan-father of Nadeem Khalil is petitioner No. 2 in both the writ petitions. Other remaining petitioners in the two writ petitions are other family members and relatives of Nadeem Khalil (husband). In Writ Petition No. 822 of 2000, the petitioners sought the quashing of the F.I.R dated 30.1.2000 in Case Crime No. 32 of 2000 under sections 498-A/323/504/506/307, I.P.C and 3/4 of Dowry Prohibition Act as well as stay of their arrest. The copy of the F.I.R is Annexure-5 to Writ Petition No. 822 of 2000. Nadeem Khalil (husband) filed his own affidavit in support of the said writ petition. As per the averments contained in the writ petition, Arsi Yusuf was married to Nadeem Khalil in November, 1998, but marital relations did not go smooth and divorce was allegedly effected through a Talaqnama dated 12.12.1999 Nadeem Khalil, however, allegedly received threats from Arsi Yusuf on phone that unless the petitioner paid an amount of Rs. 5 Lacs, they

would be implicated falsely in various criminal cases. Nadeem Khalil filed a civil suit in the Court of Civil Judge (S.D), Aligarh being O.S No. 106 of 2000, praying for a decree that she be restrained from claiming herself to be his wife, and not to enter his house. However, she lodged the instant FIR against the petitioners at P.S Khatauli, District Muzaffarnagar, making the following false allegations:

3. The said offence was allegedly committed near the; canal within P.S Khatauli of Muzaffarnagar district.
4. It was, inter alia, averred in Writ Petition No. 822 of 2000 that on 30.1.2000 Nadeem Khalil had been on duty as invigilator in Aligarh Muslim University, where he was a Lecturer and a certificate allegedly issued in this respect by the Superintendent of Examinations on 3.2.2000 was annexed as Annexure-6 to the writ petition.
5. On 11.2.2000 this Court stayed the arrest of the petitioners of Writ Petition No. 822 of 2000 in the aforesaid case crime directing the issuance of notices mid asking for counter and rejoinder affidavits. However, the investigation was ordered to continue and the petitioners were directed to make themselves available to the Investigating Officer for interrogation whenever required.
6. Arsi Yusuf (wife) filed counter-affidavit. She prayed for vacation of the stay order and also for initiating criminal proceedings against the petitioners for filing false and fabricated document (Annexure-6 to the writ petition). She reiterated the allegations made in the FIR in question. According to her, with a view to defraud and obtain an ex parte order of stay of arrest, her husband falsely alleged that on 30.1.2000, the date in question, he had been on duty as Invigilator in Aligarh University. In the counter-affidavit filed on her behalf by her pairkar P.K Chhabra, (sworn on 22.2.2000), photostat copy of the letter dated 7.2.2000 allegedly written by Prof. F.A Ansari, Superintendent of Examinations, Faculty of Engineering and Technology, Aligarh Muslim University, Aligarh together with photostat copy of list of invigilators dated 30.1.2000 had been filed to indicate that Nadeem Khalil was not at all on invigilation duty on 30.1.2000 from 2.30 P.M to 5.30 P.M as falsely shown in Annexure-6 to the writ petition filed by the petitioners. As per the photostat copy of his letter dated; 7.2.2000, the said Prof. F.A Ansari never issued any such certificate. Prof. Khalil Ahmad was the Principal of the Engineering College and had allegedly exerted pressure for issuance of false certificate of invigilation duty in favour of this son Nadeem Khalil. Prof. F.A Ansari denied his signatures on the certificate (Annexure-6), a copy of which was also annexed with the counter affidavit filed by P.K Chhabra on behalf of Arsi Yusuf. He even purported to submit his resignation

as Superintendent of Examinations through his letter dated 7.2.2000 addressed to the Vice-Chancellor of Aligarh Muslim University, Aligarh.

7. Making an application under section 340, Cr. P.C in Writ Petition No. 822 of 2000, it has been prayed that Nadeem Khalil and his father be prosecuted for the offences under sections 193/466/471/120-B, IPC for filing false affidavit and forged invigilation duty certificate to back the baseless plea of alibi of Nadeem Khalil.

8. In Writ Petition No. 5159 of 2002, the quashing of another F.I.R dated 17.8.2002 in Case Crime No. 797 of 2002, under section 498-A I.P.C read, with section 3/4 Dowry Prohibition Act, P.S Kavi Nagar, District Ghaziabad (Annexure-11 to the writ petition) has been prayed for. In this F.I.R Arsi. Yusuf claimed that she was all alone at her parental home at Ghaziabad on 1.1.2002 when Nadeem Khalil threatened her on telephone to get him paid Rs. 5 Lacs from her parents only whereafter he would divorce her in legal way. She allegedly gave information to the police on telephone. The other relevant recitals of the F.I.R read thus:

9. This petition was connected with Writ Petition No. 822 of 2000 vide order dated 5.9.2002 This Court observed that it appeared to be a malicious prosecution. Time was given for counter and rejoinder affidavits and the arrest of the petitioners in the said case crime was stayed until further orders. However, the petitioners were directed to co-operate with the investigation which was to continue. Arsi Yusuf, the main respondent filed an application supported by counter-affidavit sworn by her father, praying for the vacation of stay order and also to register a case of perjury against the petitioners. It has been contended in paragraphs No. 6 and 9 as under:

6. That to challenge the First Information Report dated 30.1.2000, the petitioners filed a Criminal Misc. Writ No. 822 of 2000 in which they set up a plea of alibi alleging that on the day of the incident, i.e 30.1.2000, the petitioner No. 1, Nadeem Khalil was conducting the engineering examination as invigilator in the Z.H College of Engineering and Technology, Aligarh Muslim University, Aligarh and to support their plea, the petitioners filed a certificate dated 3.2.2000 allegedly issued by the Superintendent of Examinations certifying the presence of Nadeem Khalil in the College on 30.1.2000, which was filed as Annexure No. 6 to Criminal Writ Petition No. 822 of 2000. It is submitted that although a priiha facie, case was made out against the accused/petitioners, but appears that this Court probably relying upon the plea

of alibi set up by the petitioners, granted them an order on 11.2.2000 against their arrest, which is filed by the petitioners as Annexure No. 3 to this writ petition.

9. That subsequently, when the deponent enquired the matter from the University Authorities about the authenticity of the alleged certificate; it transpired that no such certificate was ever issued by the Superintendent of Examinations certifying the presence of Nadeem Khalil as Invigilator on 30.1.2000. On the contrary, the Superintendent of Examination, Professor F.A Ansari, under whose signature the said certificate, was alleged to have been issued, Wrote a letter to the Vice Chancellor on 7.2.2000 complaining about the misdemeanour of petitioner No. 2 Professor Khalil Ahmad Khan, who was the Principal of the Engineering College at that time. The Superintendent of Examinations also expressed his apprehension that Professor Khalil Ahmad Khan might have tampered with the college, records to procure the desired certificate in favour of his son, Nadeem Khalil. Subsequently, the petitioner No. 2, Professor Khalil Ahmad Khan was removed from the post of Principal this charge by the University.

10. We have, heard learned Counsel for the parties and perused the material on record.

11. It would be recalled that while granting the stay of arrest in both the writ petitions, it had been directed that the investigation would go on. It is an admitted position that in ultimate culmination charge-sheets have been submitted in relation to the F.I.Rs impugned in both the writ petitions. Therefore, both the writ petitions to be dismissed, without any further debate and the law has to take its own course, with regard to the charge-sheets submitted in Court.

12. The Court has however, to consider the application of Arsi Yusuf made under section 340, Cr. P.C for prosecution of petitioners for perjury. It has been urged on her behalf that the petitioners could not dare to file rejoinder affidavit in Writ Petition No. 822 of 2000 to controvert the allegation that the certificate of invigilation duty, Annexure-6 filed by them, was a forged document. It has been vehemently argued that advancing the false plea of alibi on the basis of this forged certificate, they succeeded in securing an order of stay of arrest in Writ Petition No. 822 of 2000. The argument of the learned Counsel is that the false plea of alibi was repeated in Writ Petition No. 5159 of 2002 to project that the F.I.Rs were being lodged against the petitioners without any basis and it led the Court to make observation in its initial order dated 5.9.2002 passed in Writ Petition No. 5159 of 2002 to the effect that it appeared to be a malicious prosecution and the stay of arrest was granted with relation to the F.I.R of the incident of 1.1.2002

Reliance has been placed from her side on the case of Indian Bank v. Satyam Fibres (India) Pvt. Ltd.,¹ and Afzal v. Stated of Haryana.² It has been urged on the basis of first referred case, of India Bank (supra) that by relying on a forged certificate of invigilation duty and filing the same with Criminal Writ Petition No. 822 of 2000, the petitioners played fraud not only on her but also on the Court on the basis of the second referred case of Afzal (supra), the argument is that the false or misleading or a wrong statement deliberately and wilfully made by a party to the proceedings to obtain a favourable order would prejudice or interfere with due course of judicial proceedings and it amounts to criminal contempt defined in section 2(c) of Contempt of Courts Act.

13. On the other hand, the submission from the side of the petitioners is that offering challenge to the authenticity of the in vigation duty certificate, no affidavit has been filed of Professor F.A Ansari, Superintendent of Examinations who by his alleged communication dated 7.2.2000 to the Vice Chancellor of A.M.U, is purported to designate the same as forged, not containing his signatures. According to the learned Counsel, the petitioners filed photostat copy of the invigilation duty certificate as Annexure-6 in Writ Petition No. 822 of 2000, relying the same as being the copy of the certificate issued by Professor F.A Ansari, whereas, filing the copy of purported communication dated 7.2.2000 by Prof. F.A Ansari to the Vice Chancellor, AMU, the same (Annexure-6) Was alleged to be forged on the basis of the counter-affidavit filed by P.K Chhabra, pairokar of Arsi Yusuf. So, there was only oath against oath without any further concrete or sterling evidence, which could be in the shape of affidavit of Prof. F.A Ansari himself to pronounce the invigilation duty certificate to be forged one. As to the observation of the Court in Writ Petition No. 5159 of 2002 while passing the order dated 5.9.2002 that it appeared to be malicious prosecution, the learned Counsel argued that a series of F.I.Rs had been lodged by Arsi Yusuf against her husband and his other family members and all the facts were related by the petitioners in Writ Petition No. 5159 of 2002. Nothing adverse can be interpreted against them if on cumulative consideration, the Court observed in its order dated 5.9.2002 that it appeared to be malicious prosecution. The learned Counsel stressed that it, indeed, was malicious prosecution as would appear from mere reading of the F.I.R of Case Crime No. 797 of 2002 under sections 498-A, I.P.C and 3/4 of Dowry Prohibition Act of the alleged incident of 1.1.2002 lodged on 17.8.2002

14. The learned Counsel for Arsi Yusuf urged that the letter of Professor F.A Ansari dated 7.2.2000 to the Vice Chancellor of A.M.U, Aligarh was, in fact, official communication and deserves to be taken on its face

value that invigilation duty certificate relief upon by 3.2.2000 was a forged document. This reasoning, we are afraid, cannot possibly be accepted, because the said alleged copy of the letter of Professor F.A Ansari has not come from proper source. It is not understandable as to how Arsi Yusuf could get hold of such official communication. If Professor Ansari had himself passed it on to her, he could definitely file his own affidavit to support the contents of the same.

15. It is a fact that Professor F.A Ansari himself did not file any affidavit to say that invigilation duty certificate in question was forged and the same did not contain his signatures. It has to be kept in mind that necessary, prelude for action under section 340, Cr. P.C is that the Court should be of the opinion that it is expedient in the interest of justice to do so. Action under section 340, Cr. P.C should be taken only when the Court on objective consideration of the entire facts and circumstances, is of the belief and opinion that the interest of justice so requires. The Court may act suo motu also. It is for the Court to decide whether to take action and initiate proceedings. Even when an application is made by one of the parties, it becomes a matter between the Court and the alleged perjurer. Action under section 340, Cr. P.C is undertaken in the interest of justice and not to satisfy the private grudge of a litigant. Every case of perjury need not result in prosecution.

16. An action of law should not be equated to a game of chess. Indeed, the wife cannot rely on the sheer technicality that no rejoinder affidavit has been filed by the petitioners in criminal Writ Petition No. 822 of 2000. It is for the Court to consider the entire material and the attending circumstances to come to a right decision to be taken in the matter. The action cannot be permitted to be used by a party as a tool to derive sadistic pleasure in nailing his opponent.

17. On cumulative consideration that charge-sheets in both the cases have been submitted in Court setting the law on its course with regard to the alleged offences and that Professor F.A Ansari himself did not file any affidavit to support the contention of the wife designating the invigilation duty certificate in question to be forged and fictitious, we do not think it to be expedient in the interest of justice to accede to the prayer of Arsi Yusuf (wife) to take any action under section 340, Cr. P.C Hence, the applications under section 340, Cr. P.C are liable to be rejected.

18. In the final result, Criminal Writ Petition No. 822 of 2000 and Criminal Writ Petition No. 5159 of 2002 are hereby dismissed. The applications of Arsi Yusuf praying for action under section 340, Cr. P.C are also

rejected.