
(2006) 05 AHC CK 0068

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 4968 of 2002

Abu Laise

APPELLANT

Vs

State of Uttar Pradesh and Sayyam Uddin

RESPONDENT

Date of Decision : 12-05-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(2), 173(3), 173(4), 173(5), 173(6)

Citation : (2006) 05 AHC CK 0068

Hon'ble Judges : K.N. Sinha, J

Bench : Single Bench

Advocate : Syed Ali Murtaza and M.K. Shukla, for the Appellant; V.K. Rai and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

K.N. Sinha, J.—By means of the present application u/s 482 Cr.P.C., applicant Abu Laise has sought for quashing of the charge sheet No. 33A/1995 of case crime No. 32/1995 police station Balua, district Varanasi (Annexure No. 6).

2. The brief facts, giving rise to this petition, are that an F.I.R. was lodged against nine persons, including the applicant, on the report of opposite party No. 2. From the side of applicant and others an N.C.R. was registered at police station Balua district Varanasi. When the incident took place the applicant was posted at Sonebhadra, about 200 Kms. from the place of occurrence. The applicant's father submitted an application to the Senior Superintendent of Police, Varanasi, alleging that the applicant was not involved in the incident. On enquiry, the involvement of the applicant was not found. Consequently, charge sheet was submitted against eight persons and it was stated in the charge sheet that investigation against the applicant was going on. Later on, final report was submitted against the applicant before the concerned court, which is Annexure No. 4 to this petition. The final report was pending before the court concerned and the order was passed by the concerned court to prepare requisite copy of

final report, the Senior Superintendent of police Varanasi further passed an order directing the S.I.S. to further investigate (in the matter and submit the report. It has been submitted in para 12 of the Affidavit that it is the settled position of law that with the submission of Charge sheet or final report in the court concerned, the power to further investigate a case comes to an end and it can be directed only after obtaining the permission from the court concerned. The order dated 6.10.1995 was passed by Senior Superintendent of Police, Varanasi for further investigation. It does not anywhere appear that previous investigation was not honest. A copy of the order dated 6.10.1995 has been annexed as Annexure No. 5. The order dated 6.10.1995 passed by Senior Superintendent of Police, Varanasi is against the law. The power u/s 173(8) Cr.P.C. is on the Station House Officer only. Acting on the direction of Senior Superintendent of Police, Varanasi the SIS submitted a charge sheet against the applicant before the concerned court. The court took cognizance and issued summon to the applicant but since he was not present, non bailable warrant was issued.

3. On the above ground, quashing of the charge sheet and non bailable warrant has been prayed.

4. A supplementary affidavit was also filed along with the statement of Kalloo Khan, Sri Nath, Gram Pradhan Raja Ram and Sultan.

5. The counter affidavit was filed by opposite party No. 2 on the ground that the place, where applicant is serving is not 200 Kms. from the place of occurrence, but it is only 120 Kms. The date of occurrence is 21.5.1995, which was Sunday and no certificate from Head of the Office was that Government office was opened on that day. The Senior Superintendent of Police has full power to order the further investigation. The court properly took cognizance and allegations of the applicant are vague. There are about eight witnesses, if one or two witnesses have not stated the whole of the case, cannot be thrown out.

6. The rejoinder affidavit was also filed.

7. I have heard learned Counsel for the applicant, learned A.G.A. and learned Counsel for the opposite party No. 2. The plea taken by the applicant is that on the date of occurrence, i.e. 21.5.1995, the applicant was posted at Sonebhadra, about 200 Kms. from the place of occurrence. As indicated above, it has been categorically stated in para 8 of the counter affidavit that 21.5.1995 was Sunday. The investigation of LIU nowhere shows that it, being a government office, was opened on Sunday. In the rejoinder Affidavit, this para 8 of the counter affidavit has been dealt in para 7 of the rejoinder affidavit but no specific reply has been given. It is not denied that it was Sunday. However, this fact has been verified from the record that 21.5.1995 was Sunday. Nothing has been said as to whether the government office, where applicant is said to be employed, was functioning on Sunday. Annexure No.SA-4 has been filed along with supplementary affidavit, which is said to be some certificate showing that Daya Ram was present in the office at 2.00 or 2.30 PM. Firstly, this certificate is

unauthorized having no value and secondly, the occurrence had taken place at 8.00 AM in the morning, i.e. six-seven hours prior to the occurrence. The distance as given in the counter affidavit is also not denied.

8. Thus, the very back bone of the defence plea falls on ground. So far as the order for further investigation by the Senior Superintendent of Police is concerned, there cannot be said to be any illegality. Section 173(8) Cr.P.C. runs as follows:

8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of Sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under Sub-section (2).

9. The above provision shows that even if a charge sheet has been filed, the further investigation can be done if the officer in charge of the police station obtains any further evidence. The Senior Superintendent of Police has ordered for further investigation and not that he has investigated the case. It was given to another agency, which is permitted by law.

10. The next argument was that there was no investigation with the permission of the court where charge sheet has been filed. This argument does not hold good, firstly, for the reason that no charge sheet was filed against applicant Abu Laise nor any final report was submitted. The copy of charge sheet (Annexure 2) shows that the investigation against the applicant was pending. Thus, this Court has nothing to do and it was in the hands of investigating agency. However, later on, as Annexure No. 4 shows that investigation has come to an end against the applicant but it was not agreed by the Senior Superintendent of Police, who ordered further investigation by Annexure No. 5 and then charge sheet was submitted.

11. Thus, considering the above factual and legal position, the application u/s 482 Cr.P.C. is without force and it is hereby dismissed. Interim order, if any, stands vacated.