
(2005) 02 AHC CK 0173

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 7293 of 2002

Brij Mohan Aggarwal, Advocate

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 16-02-2005

Acts Referred:

Citation : (2005) 2 ACR 1141

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Advocate : Rajendra Kumar Pandey and Archana Pandey, for the Appellant;
A.G.A., for the Respondent

Final Decision : Disposed Of

Judgement

Ravindra Singh, J.—Heard Sri Rajendra Kumar Pandey and Dr. Archana Pandey learned counsels for the petitioner and learned A.G.A.

2. It is contended by the learned counsels for the petitioner that he lodged an F.I.R. against the respondents No. 5 to 7. The matter was investigated by the police. The I.O. came to conclusion that the accused persons have not committed any offence, so final report was submitted by the I.O. in the court of learned C.J.M., Ghaziabad. Against that final report the petitioner filed protest petition clearly mentioning therein that no fair investigation was done by the I.O., even the statement of the witnesses were not recorded. The entries in the name of the witnesses were made in case diary sitting at the police station. In such circumstances the option was open for the learned Magistrate to treat the protest petition as complaint, but without treating the protect petition as complaint the learned Magistrate accepted the final report. It is contended by the learned counsel for the petitioner that the impugned order dated 25.9.2002 passed by the learned C.J.M., Ghaziabad is illegal, It is further submitted that the revisional court also did not consider the manifest error committed by the learned Magistrate and passed the illegal order dated 28.10.2002 dismissing the Criminal Revision No. 541 of 2002.

3. This contention has been opposed by learned A.G.A. by stating that the impugned orders are well reasoned. There is no illegality or irregularity in the impugned orders.
4. From perusal of the record and the impugned orders it appears that the petitioner has filed protest petition clearly mentioning therein that the statements of the witnesses were not recorded by the I.O. and no fair investigation was done. In such circumstances it was not proper for the learned Magistrate to accept the final report after relying upon the same and it was proper for him to consider whether the protest petition filed by the petitioner may be treated as complaint or not, so the impugned order dated 25.9.2002 passed by the learned Chief Judicial Magistrate, Ghaziabad and the order dated 28.10.2002 passed by the learned Sessions Judge, Ghaziabad dismissing the revision, without considering the manifest error committed by the learned C.J.M., Ghaziabad are illegal and hereby set aside.
5. The learned Chief Judicial Magistrate, Ghaziabad is directed to pass a fresh order on the police report and the protest petition in accordance with the provision of law.
6. With this observation the petition is finally disposed of.