
(2008) 06 AHC CK 0044
In the Allahabad High Court

Chandra Pal alias Chachchu and Others	APPELLANT
Vs	
State of U.P. and Another	RESPONDENT

Date of Decision : 23-06-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 173, 200, 202, 307
Penal Code, 1860 (IPC) — Section 147, 307, 427, 506

Citation : (2008) CriLJ 4677

Hon'ble Judges : R.K. Rastogi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.K. Rastogi, J.—This is an application u/s 482 Cr.P.C. to quash the proceedings of Criminal Case No. 92/05 State v. Chandrapal and Ors. pending in the Court of A.C.J.M. Hamirpur, District Hamirpur under Sections 147, 307, 427, 506 I.P.C.

2. I have heard learned Counsel for the applicants as well as learned A.G.A. at the stage of admission and since the point involved in this case is legal one, I am deciding it with the consent of the parties at the admission stage without calling for any counter affidavit.

3. The facts relevant for disposal of this application are that the complainant Opposite Party No. 2 filed an application u/s 156(3) Cr.P.C. against the accused applicant in the Court of C.J.M., Hamirpur on 12-6-01 with these allegations that the complainant resides at Kajauli. His grand father Baijnath was doing agricultural work in his field at Kajauli and the complainant and his uncle Swatantra Bahadur looked after that work. The complainant's mother and grand mother had purchased another field adjacent to the above ancestral field and the crop of gram was sown in it. The accused Chandrapal, his brother Prem Pal and co-accused. Bhanu Pratap, Raja Kunwar and Dinesh damaged the crop of gram in the field. The complainant gave its information at P.S. Kotwali but no action was taken. Thereafter, on another date when the complainant's mother and grand mother had gone to cut a Babool tree in that field, the above named accused

persons armed with gun, rifle, country made pistol, Farsa and Axe in their hands reached there and fired in air. The complainant gave information of this incident to the higher police authorities by registered post but no action was taken. Then on 5-6-01 he and his uncle along with Munna Kewat and Ram Babu Kewat were going to that field to take wood of the cut tree. The accused had concealed themselves near a tank in the way. On seeing the complainant and his uncle they challenged to kill them and Chandra Pal @ Chachchu fired at them. However, the complainant and his companions did not receive any injury. Then they again went to police station and gave its information but no action was taken. The accused were asking them to leave the village threatening that otherwise they would be killed. Then he moved this application u/s 156(3) Cr.P.C. against accused applicants containing allegations under Sections 147, 506, 427 and 307 I.P.C.

4. The learned Magistrate passed an order on 2-7-01 directing the police to register the case and investigate the same. Then the report was registered at the police station as Case Crime No. 134/01 and it was investigated. The police after investigation submitted the final report on 19-7-01 asserting that the allegations made in the application are false and actually there was a civil dispute between the parties in respect of a place of land and on account of that dispute both the parties were levelling false allegations against each other.

On receipt of this report, the learned Magistrate passed an order for issuing of notice to the complainant. The notice was served upon the complainant and he appeared before A.C.J.M. on 21-11-02. Then the learned Magistrate fixed a date for recording statement of the complainant. The statements of the complainant and his witness Munna were recorded on 28-7-04. The statement of Swatantra Bahadur was recorded on 13-8-04. Then the learned Magistrate passed an order on 2-9-04 summoning the accused under Sections 147, 427, 506 and 307 I.P.C. Thereafter, the accused filed this application u/s 482 Cr.P.C.

5. I have perused the record of this application u/s 482 Cr.P.C. It appears on perusal of this record that on receipt of the notice the complainant appeared before the A.C.J.M. on 21-11-02 but he did not file any protest petition and the learned Magistrate fixed a date for recording statements of the complainant and his witnesses. Thereafter, the statements of the complainant and his two witnesses named Munna and Ram Babu were recorded by him, and then the learned Magistrate passed an order on 2-9-04 in which he mentioned the allegations made in the application u/s 156(3) Cr.P.C. against the accused. Then he stated that a final report has been submitted in the case by the police, but the allegation of the complainant was that the police had not properly investigated the case and against that final report the complainant had produced three witnesses including himself and on the basis of the statements of these witnesses a prima facie case under Sections 147, 427, 506 and 307 I.P.C. appeared against the accused applicants and so he was summoning the accused applicants for these offences.

6. It is apparent from perusal of the above order of the learned Magistrate that he has not followed the correct procedure. After submission of the final report, a notice is issued to the complainant to file an objection, if any, against the report and then the complainant, if he is aggrieved with the final report, may file his objection which is called "Protest Petition". It appears that in the present case no such protest petition was filed by the complainant. On the other hand, when the complainant appeared before the learned Magistrate on 21-11-02, he fixed a date for recording statement of the complainant. Thus the procedure adopted by him is unwarranted by law. The correct procedure is that the complainant after his appearance should have filed the protest petition against the final report and then the Magistrate has to fix a date for hearing of the final report as well as the protest petition. If after hearing, the learned Magistrate finds that the final report is justified he rejects the protest petition and accepts the final report, but if he is of the view that the final report is not justified he has got the following options:

(1) If he finds that there is sufficient evidence against the accused persons in the case diary and the I.O. has wrongly submitted a final report, he can reject that final report and summon the accused persons on the basis of the evidence in the case diary. In that contingency, the case shall proceed as a State case.

(2) If the Magistrate is of the view that the I.O. has not properly investigated the case and there is no evidence in the case diary to summon the accused persons, he has got the following two options:

(i) He can direct the police to further investigate the case and then submit its report u/s 173 Cr.P.C., or

(ii) After rejecting the final report, he can treat the protest petition as a complaint, and then he can, after taking evidence, under Sections 200 and 202 Cr.P.C., pass suitable orders on that complaint in the light of the evidence recorded under the above Sections.

7. The position, in the present case is that the learned Magistrate did not follow the above procedure. When the complainant was dissatisfied with the final report, he should have required the complainant to file a protest petition against the final report and then after hearing the complainant on that protest petition, he could have passed orders adopting any of the alternatives as would have been applicable to the facts of the present case. But he did not do so, and without any protest petition he recorded statements of the complainant and his witnesses and passed an order for summoning the accused persons on the basis of statements of witnesses recorded by him under Sections 200 and 202 Cr.P.C. It may also be mentioned that the offence u/s 307 I.P.C. is triable by the Court of Session and so if he was of the view that there appeared a case u/s 307 I.P.C. he should have required the complainant to produce all his witnesses, but he did not do so.

8. The position in this way is that learned Magistrate passed the above order in utter violation of the provisions of law. Therefore, the order passed by him

amounts to abuse of the process of the Court and so it is liable to be set aside. It is accordingly set aside and the matter is remanded to his Court to deal with the case in accordance with the procedure prescribed in the Cr.P.C. in the light of the observation made above in the body of the judgment. The application u/s 482 Cr.P.C. is allowed to this extent.