

(2006) 03 AHC CK 0108

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 2162 of 2006

Chhotey Lal

APPELLANT

Vs

State of U.P. and Smt. Rati Basor

RESPONDENT

Date of Decision : 09-03-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 169, 173, 190(1), 2, 200
Penal Code, 1860 (IPC) — Section 323, 376, 504, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(12), 3(10)(12)

Citation : (2006) CriLJ 2265

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Advocate : B.N. Singh and S.K. Dubey, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Vinod Prasad, J.—Heard Sri S.K. Dubey advocate holding brief of Sri B.N. Singh advocate , learned Counsel for the applicant, at a great length and the learned AGA on behalf of respondent State.

2. The applicant has prayed for quashing of proceeding of complaint case being complaint case No. 164 of 2005 Smt. Rati v. Chotey Lal and Anr. under Sections 376/504/506/323 IPC and 3(1)(12) SC/ST Act PS Nadigaon, District Jalaun pending before Judicial magistrate Orai District Jalaun.

3. In the nut shell, the allegation of the complainant Smt. Rati is that she is a resident of village Bahkhrol and is a poor women of scheduled tribe Bachor. Her husband Harmukh was doing the work a labourer in village Richora, Gwalior. On 30.3.96 at 8 AM, the complainant Smt. Rati was going to her husband when Chotey Lal , armed with a gun and Ram Babu ,both resident of her village, all of a sudden came from behind, caught hold of her from behind, took her to a drench in village Arjunpura which is near the way and there hurled caste abuses on her

and Chote Lal threw her on the ground and, without her consent, committed rape on her as a result of which she received injuries and her bangles were broken. Ram Babu during this ghastly act, armed with the gun of Chotey Lal, was threatening her with dire consequences. On her hue and cry Chadama, Dinesh Kumar, Smt. Mani and Govind Das reached at the spot and challenged the accused who escaped from there threatening to annihilate her family if she reported this incident. The victim came to Kotwali Orai and lodged a report She was got medically examined by the police in district women hospital Police of police station Kotwali also seized her petticoat which was stained with semen. Police also recovered her broken bangles from the spot. As the police did not do any thing in the matter , the complainant Smt. Rati filed a complaint in the court of the magistrate, in which her medical examination report was summoned by the court from the police, but meanwhile, due to suffering from tuberculosis, she could not appear in the court on 2.6.2003 as a result of which her complaint was dismissed by the court for her absence. After recovery she is again filed the complaint. The complainant prayed for summoning the accused and punish them for offences committed by them. u/s 200 Cr.P.C. the complainant examined herself and supported her allegations in full. Smt Rati, u/s 202 Cr.P.C. examined her witnesses Govind Das PW 1 and Smt Manni PW 2. The two witnesses also supported her version on all material aspect of the case. She also file her medical report (Paper No. 14 Ga) and pathologist report (Paper No. 15 Ga). The learned Judicial Magistrate Orai on the above evidence summoned the applicant for offence under Sections 376/504/506 323 IPC and Section 3(1)(10)(12) SC/ST Act vide it's order dated 1.12.2005. Hence this application u/s 482 Cr.P.C. for quashing of the said case.

4. The learned Counsel firstly contended that in this case the police after investigation had submitted a final report but instead of filing a protest petition complainant Smt. Rati, respondent No. 2 filed the complaint which was not maintainable and the complainant had no right to maintain a complaint before any order is passed on final report by the magistrate which was pending for his consideration. He secondly, contended that the Magistrate should not taken cognizance during the consideration on final report on such a complaint. He lastly, submitted that since the complainant had not examined her all the witnesses u/s 202(2) Proviso Cr.P.C. the proceeding must be quashed as the procedure is against the provisions of Section 202(2) Proviso Cr.P.C. The first two submissions of the of the counsel for the applicant are intertwined and therefore are take up simultaneously. When a FIR is registered into a cognizable offence the police gets a right to investigate it, with out the order from the magistrate, and to submit it's opinion to the Magistrate either u/s 169 Cr.P.C.(Final Report) that no case is made out from the investigation or file an opinion u/s 173 Cr.P.C. (Charge Sheet)that offence is disclosed against the accused persons and they deserves to be tried. In case the charge sheet is filed the informant does not come into picture at all till he is summoned as a witness to give evidence in the case, unless he has to raise any grievance against the submission of charge

sheet regarding offence/ offences or accused charge sheeted or left out. However in case a final report is filed by the investigating officer opining that no offence is disclosed, an opportunity to the informant is to be afforded to show cause against the said opinion filed by the police. This the informant can do by filing a protest petition or he even can file a complaint without filing a protest petition. Filing of a protest petition is all to gather a different act than filing of a complaint. A protest petition is filed only for the purpose to register objections against the police's opinion that no case is made out from the investigation and nothing else. This is only for the purposes to show that the investigating agency is not fair to the informant and has wrongly submitted its opinion, the final report. However an aggrieved person is also entitled to not to file a protest petition against the final report and instead file a complaint regarding the offence mentioned by him in the FIR. Merely because a protest petition is not filed against the final report does not take away the right, of the aggrieved informant, to approach the court through a complaint with the prayer that the offender has committed offence and the court should summon him/them for the same, irrespective of the fact that police has opined that no offence is made out, and punish him/ them. This right of the complainant is independent of and any other right available to him. This right, to file a complaint, is not subject to filing of the protest petition. The right to file a complaint is governed by Section 2(d) read with Section 190(1)(a) Cr.P.C. whereas right to file a protest is governed by Section 190(1)(b) thereof. Consideration on FR by a magistrate is a different act than to entertain a complaint. Consideration on a final report by the magistrate does not take away the right of the informant to file a complaint. Moreover, there is another aspect of the matter. Consideration on the final report by a magistrate is a pre- cognizance act. The magistrate has only to see as to whether the report submitted by the police does or does not make out any offence and whether the investigating officer is justified in submitting the final report or not. This fact does not in any way obliterate the power of the magistrate to take cognizance of offence u/s 190(1)(a), that is on the complaint. The power conferred on the magistrate u/s 190(1)(a) and (1)(b) are coextensive and not mutually exclusive. This does not mean that there can be two trials for the same offence as the two cognizance has to be clubbed for trial and there can be only one trial. This is so provided u/s 210 Cr.P.C. But so far as the cognizance is concerned there is no bar in taking it. Thus the first two submissions of the learned Counsel for the applicant is devoid of merit and is illegal and hence rejected.

5. Coming to last submission of the counsel for the applicant, it only to be noted that the complainant has to examine only those witnesses on whom he/ she places reliance. u/s 202(2) proviso what is required of the magistrate is that he should " call upon the complainant to produce all his witnesses and examine them on oath". This does not mean that the complainant is bound to examine even those persons on whom he/she does not want to place reliance. It only means that the complainant be directed, by the court, that he/she should

examined all those witnesses on whom he/she places reliance and 10 whom he/she wants to examine at the trial stage before the court of sessions. This is so laid down because the sessions court should know what is the evidence against the accused sent for trial before it and the accused must know what is the evidence against him for which he has been committed to the court of sessions for trial and the prosecutor must know ,on what evidence he is to prosecute the malefactor. The accused has to be furnished with the copies of statement u/s 208 Cr.P.C. and therefore all his/her witnesses should be directed to be examined. Learned Counsel for the applicant relied upon the judgment of the this Court reported in 2005 ACC 218 Sat Pal and Ors. v. State of U.P. In that judgment the words "all his witnesses" appearing in the Section 202(2) Proviso has not been examined. More over that case is distinguishable of facts as well, as in the present case the complainant has examined her witnesses on whom she has placed reliance. Thus that judgement is of no help to the applicant. It has been held by the apex court in (1) 2000 ACC 444 Rosy and Anr. v. State of Kerala, "I wish to add that the magistrate in such a situation is not obliged to examine the witnesses who could not be produced by the complainant when asked to produce such witnesses, " (Emphasis mine). More over there is nothing on record to suggest as what prejudice has been caused to the applicant. Thus, this last submission of the counsel for the applicant is also of no help to him and is rejected.

6. This application , consequently, is devoid of merit and is dismissed. The offence is very old and therefore the trial court is directed to expedite the trial and make and endeavour to conclude it within six months. Office is directed to communicate this order to the trial court within one weeks.