

(2011) 03 AHC CK 0271

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 4402 of 2010 With Criminal Case No. 1409 of 2011

Chunna @ Brijesh

APPELLANT

Vs

State of U.P.and another

RESPONDENT

Date of Decision : 31-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 307

Citation : (2011) 8 RCR(Criminal) 848

Hon'ble Judges : Shri Narayan Shukla, J

Final Decision : Disposed Of

Judgement

Shri Narayan Shukla, J.—Heard Mr. S.N. Pandey, learned Counsel for the petitioner as well as Mr. Rajendra Kumar Dwivedi, learned Additional Government Advocate for the State.

Upon perusal of the record, it is evident that the First Information Report was lodged under section 307 of the Indian Penal Code (hereinafter referred to as "the Code"), but after investigation, the Investigating Officer found that the offence committed was only under section 337 of the Code and as such he chargesheeted one Rahul Dixit, grand son (Naati) of the complainant. Being aggrieved with which the complainant filed a complaint before the learned Magistrate, which has been registered as Complaint Case No. 3008 of 2009. The learned Magistrate has summoned the petitioner vide order dated 6th of May, 2008, which is under challenge, and thereafter he has issued a non bailable warrant to the petitioner in the said complaint case, which is also under challenge.

2. The learned Counsel for the petitioner submits that once the matter was investigated and no case is found to have been made out under section 307 of the Code after investigation the complaint filed by the complainant for trial of the petitioner under section 307 of the Code is absolutely misuse of the process of

the Court.

3. After going through the facts of the case as well as the settled view on the point, I am of the view that if the complainant was aggrieved with the police report, it was open for her to move a protest petition before the learned Magistrate instead of taking a different recourse i.e. instituting the complaint case. Therefore, I hereby issue direction to the learned Magistrate concerned to treat the complaint in question as a protest application in the Criminal Case No. 10 of 2008 arising out of Case Crime No. 392/07, under section 337 of the Code, Police Station Pali, Hardoi and proceed with the aforesaid application and pass an appropriate order after providing opportunity of hearing to the parties concerned. The order impugned dated 6th of May, 2008 as well as all consequential orders are hereby quashed and petition is disposed of finally.