
(2016) 01 AHC CK 0281

In the Allahabad High Court

Case No : Application U/s. 482 No. 16899 of 2015

Durvijay Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-01-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, Section 197, Section 482

Penal Code, 1860 (IPC) — Section 147, Section 302, Section 342

Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 — Section 2, Section

Citation : (2016) 94 ACrC 257 : (2016) 4 ADJ 26

Hon'ble Judges : Ramesh Sinha, J.

Bench : Single Bench

Advocate : Rajrshi Gupta, Dileep Kumar, R.C. Tiwari and Rajiv Lochan Shukla, for the Appellant; Govt. Advocate and Manoj Kumar Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

Ramesh Sinha, J.—1. This application under Section 482 Cr.P.C. has been filed for quashing the impugned order dated 20.5.2015 passed by Additional Sessions Judge (Court No. 2), Aligarh in Criminal Revision No. 1039 of 2013 (S.I. Anand Prakash and others v. State of U.P. And another) by which the revision preferred by petitioner has been dismissed and the order dated 29.11.2013 passed by Chief Judicial Magistrate, Aligarh in Case No. 115/12 of 2013 (Manveer Singh v. S.I. Anand Prakash and others) arising out of Case Crime No. 364 of 2012, P.S. Quarsi, District Aligarh under Sections 147, 342, 302 I.P.C. by which protest petition filed by Manveer Singh was allowed and the final report No. 03 of 2012 dated 28.8.2012 was rejected.

2. Brief facts of the case are that the first information report was lodged on 15.4.2012 at 21.30 hours by one Manveer Singh, the brother of the deceased Shyamu in which it was stated that he along with his two brothers Ramu and Shyamu had gone to village Rustampur Elam at 9.00 a.m., P.S. Quarsi, District

Aligarh to meet her sister. The informant along with his brothers and sisters Smt. Munesh Kumari were having conversation in the house at about 11.30 a.m., a team of S.O.G. in plain clothes had gone to the house and were known to them from before. The S.O.G. police personnel forcibly were taking his brothers Ramu and Shyamu from the house on which the informant and his family members objected and asked about the reason for taking the two brothers but they were threatened for dare consequences of their lives by the four police personnel, who were armed with revolver and pistol. The informant and his family members informed the police personnel that Shyamu was not wanted in any case and he is on bail in all the cases and why he is being taken by them but the police personnel did not paid any heed to their request and started assaulting the two brothers and took them in a Bolero vehicle. The informant and along with his family members and other persons of the village followed the vehicle of the police personnel. The police took two brothers Ramu and Shyamu at police outpost Talanagari and they confined the two brothers and started beating them and tortured Shyamu by pouring water through nose and on account of which Shyamu died. It was further stated that after the death of Shyamu, police personnel administered poisonous substance in his mouth and also poured water in his mouth. The police thereafter, brought the accused Ramu to police station Quarsi and confined him in police lock up and took Shyamu to Medical College, Aligarh where he was declared dead. The incident was witnessed by informant along with one Arun Kumar son of Mahendra Singh, Prem Pal Singh son of Nihal Singh, Bhura Singh son of Hari Pal Singh and Smt. Munesh Kumari wife of Virendra Pal Singh and other persons of village Rustampur. The F.I.R. was lodged against all the applicants by informant Manveer Singh, opposite party No. 2, who has died during the pendency of present application.

3. The Investigation of the case was initially conducted by Station Officer of Police Quarsi, thereafter, it was entrusted to S.I.S., which interrogated the complainant and the witnesses mentioned in the F.I.R. who have supported the prosecution case.

4. The inquest of the deceased was conducted under the supervision of Additional City Magistrate, Aligarh in the presence of family members of the deceased Shyamu at J.M. Medical College, Aligarh on 15.4.2012. The post-mortem of the deceased was also conducted on the same day by the panel of three doctors under the videography. The doctor opined that immediate cause of death of Cardio Respiratory Arrest and highlighted that the cause of death could not be ascertained, hence viscera was preserved for chemical analysis. Further the doctors did not find any internal or external injuries on the person of the deceased.

5. As per viscera report dated 24.8.2012 Organophosphorus Insecticide was found in the viscera of the deceased. The Investigating Officer submitted a final report on 28.8.2012 stating that the deceased Shyamu himself consumed some poisonous substance as he was in frustrated mental state and S.O.G. Unit i.e.

applicants had no concern in the said episode and accusation levelled against them is not substantiated by any cogent evidence, therefore, requisition for expunging accusation was made by submitting the final report. The final report which was placed before the Senior Superintendent of Police, Aligarh, who had raised six issues and directed thorough investigation on those issues and the process of investigation has commenced under the direction of Senior Superintendent of Police, Aligarh which was incorporated in Parcha No. SCD-1 dated 8.9.2012. After submission of the final report dated 28.8.2012 being F.R. No. 03 of 2012, the investigation was transferred and entrusted to the Circle Officer Atrauli under the orders of S.S.P., Aligarh passed on 11.9.2012 on the request of informant Manveer Singh. In pursuance of the same, the investigation was entrusted to Circle Officer/Deputy Superintendent of Police, Circle Khair, who again interrogated the informant Manveer Singh and recorded his statement and other witnesses mentioned in the F.I.R. The Circle Officer, Circle Khair, Aligarh also interrogated Dr. V.K. Gupta, Senior Orthopedic Surgeon who conducted the post mortem of deceased his statement was recorded on 31.10.2012. After the investigation, the Investigating Officer Circle Officer also confirmed the earlier final report and made recommendation for accepting the said final report. Again a direction was issued by Senior Superintendent of Police (City), Aligarh on 21.11.2012 for further investigation and in that context Circle Officer has recorded statement of Constable Prem Chandra and Constable Ram Pratap on 23.11.2012. The said investigation was also concluded on 28.11.2012 by which the earlier final report No. 03 of 2012 dated 28.8.2012 was reiterated and recommendation for accepting the final report was made by expunging the accusation against the accused persons. The said final report was submitted before the C.J.M., Aligarh on 14.2.2013 which was registered as Miscellaneous Case and notices were issued to complainant/informant, fixing 1.4.2013. The C.J.M. Aligarh on issuance of notice, the complainant filed a protest petition against the final report and the learned Magistrate after examining the material and evidence collected during the course of investigation including protest petition, rejected the final report and allowed the protest petition and summoned the applicants for offence under Sections 147, 342, 302 I.P.C. for trial.

6. Aggrieved by the order passed by the Magistrate dated 29.11.2013, the applicants preferred a revision before the Sessions Judge, Aligarh and the said revision came up before Additional Sessions Judge, Court No. 2, Aligarh, who dismissed the revision of the applicants and upheld the order of the Magistrate dated 29.11.2013. Hence, the present 482 Cr.P.C. application filed by the applicants challenging the impugned order passed by the Court's below.

7. Heard Sri Dileep Kumar, Advocate assisted by Sri Rajiv Lochan Shukla, learned counsel for the applicants and Sri Brijesh Sahai, Advocate assisted by Sri Manoj Kumar Srivastava, learned counsel for the opposite party No. 2 as well as Sri Nikhil Chaturvedi, learned AGA for the State.

8. It has been contended by the learned counsel for the applicants that the

deceased Shyamu and his real brother Ramu were the twins and they were wanted in several criminal cases and they were having criminal history of about 10 cases and award of Rs. 5,000/- were on their head. The applicants, who were the members of S.O.G. Unit, had reached the house of the sister of accused Ramu and Shyamu, on an information received from the informer regarding their presence as they were wanted in criminal case i.e. Case Crime No. 252 of 2010, under Section 2/3 U.P. Gangsters and Anti Social (Prevention) Act to arrest. The said accused persons were proclaimed offender in view of the order dated 5.1.2011 passed by Senior Superintendent of Police, Aligarh. He submitted that as the two brothers were found at their sister's house and were twins because their true identity could not be ascertain, hence, they were taken to the police outpost Talanagari of police station Harduaganj. He further argued that a Head Constable Hemendra, who was acquainted with the said two accused Ramu and Shyamu was also called at police station outpost Tananagari to confirm the identity of the twins brothers Ramu and Shyamu. Further the informer had also managed to call a reliable person for fixing the identity of two twin brothers Ramu and Shyamu and the said person along with the informer reached in front of Pandit Deen Dayal Upadhyay Hospital, Aligarh and confirmed the identity of Ramu and Shyamu and after ascertaining their respective identity, Shyamu was let free as he has already obtained bail, after confirming the said factum in front of Pandit Deen Dayal Upadhyay Hospital, Aligarh. Ramu was arrested as he was wanted under Section 2/3 Gangsters Ac relating to Crime No. 252 of 2010, P.S. Gabhana, District Aligarh and lodged in the lock up of police station Quarsi situated in nearby vicinity. Shyamu and other family members who had followed the SOG Unit from village Rustampur Elam have returned back after exchange of hot words between Ramu and Shyamu, on the issue of Ramu's arrest as he blamed his brother Shyamu for not obtaining his bail. Thereafter Ramu was brought to police Quarsi and lodged in the lock up after making entry in General Diary about the bringing of Ramu and Shyamu from village Rustampur Elem and after ascertaining the identity of Ramu, affecting his arrest in front of Pandit Deen Dayal Upadhyay, Hospital, Aligarh and letting free Shyamu, who had obtained bail in the said case. He submitted that while in the process of making entry in the General Diary, Ramu was arrested and Shyamu came at the Quarsi police station started talking with his twin brother Ramu, who was in the lock up and in the raised voice amongst the dialogs, he has taken poisonous substance under frustration on account of complaint made by his brother Ramu in deliberately not getting him bailed out for oblique purposes. The incharge S.O.G. Unit Anand Prakash (applicant No. 3), who was dictating the episode for entering in the General Dairy by Constable Clerk, police station Quarsi, heard the said dialog and started confirming the factum of taking poisonous substance by Shyamu by interrogating him for the said cause. Shyamu confidently reiterated the factum of taking poisonous substance purchased from the paith (Mini Market) usually held on Sunday. The applicant No. 3 immediately brought Shyamu at J.N. Medical College, Hosiptal, Aligarh to provide immediate medical treatment to save his life, whose condition deteriorated and was admitted at Emergency Ward

of J.N. Medical College, Hospital, Aligarh after being OPD patient and attending doctor had made best efforts to save the life of Shyamu but all the efforts were in vain and he was declared dead. An endorsement was made in the G.D. Report No. 34/15:05 hours dated 15.4.2012 at police station Quarsi regarding the same.

9. He submitted that at the instance of informant, the investigation was transferred time and again and after thorough investigation by the various Investigating Agency a final report was submitted thrice in the case. Ultimately, it was investigated by C.B.C.I.D. which also submitted a final report in the Court of Magistrate. He argued that a Magisterial inquiry was ordered by the District Magistrate in which the applicants were exonerated as it was found that the deceased Shyamu himself consumed poisonous substance and died and the applicants had no concerned at all with the incident of his death. He further submitted that the prosecution case as set up in the F.I.R. that the deceased Shyamu was tortured by pouring water through his nose when he was died he was administered poison by the S.O.G. Unit i.e. applicants is false. He referred the statement of Dr. V.K. Gupta, recorded under Section 161 Cr.P.C. that if a person has died then no circumstances poison can be administered. He submitted that it was also a case of prosecution that the deceased and his brother Ramu were assaulted by the police personnels while they were brought from the house but the post mortem report of the deceased shows that he did not receive any anti-mortem injuries on his person. Thus, false case has been set up by the informant and family members of the deceased Shyamu. He further argued that the eye witnesses, who are mentioned in the F.I.R., namely, Arun Kumar, Prem Pal Singh, Bhura Singh were related to the informant and the deceased. Moreover, their location was also found elsewhere at the date and time of incident as is evident from the call detail reports. The location was found at Tehsil Sikalpura which was 60 Km. away from the place of incident. He also pointed out that the investigation of the case was also entrusted under the orders of Chairman of National Human Rights Commission on a complaint made by the complainant which was forwarded by the District Magistrate and a Magisterial inquiry was ordered which exonerated the applicants in its inquiry report dated 3.1.2013. He lastly argued that the applicants being the police members of the S.O.G. Unit in discharge of their official duty had raided the house of the two accused, namely, Ramu and Shyamu, who were wanted in a criminal case i.e. Case Crime No. 252 of 2010 and award of Rs. 5000/- was on their head under the orders of S.S.P., Aligarh dated 5.1.2011. Hence, no sanction under Section 197 Cr.P.C. has been obtained from the competent authority for their prosecution in the present case. Hence, the order for taking cognizance by the Magistrate and confirmed by the Lower Revisional Court is liable to be set aside on this ground alone. Learned counsel for the applicant in support of his contention has placed reliance on the judgment of Apex Court in the case of Rajib Ranjan and others v. R. Vijay Kumar, (, 2015 (88) ACC 332), Raghunath Anant Govilkar v. State of Maharashtra and other (, 2008 (61) ACC 42) and State of U.P. v. Paras Nath Singh (: 2011 (72) ACC 957).

10. Per contra Sri Brijesh Sahai, learned counsel for the informant has submitted that the informant of the case has no doubt died during the pendency of present case but the State is the prosecuting agency to prosecute the applicants and death of the informant would not render the prosecution of the applicants to an end. Moreover, there are eye witness account of the incident who have supported the prosecution story time and again and have given their statements before various Investigating agency supporting the prosecution version given in the F.I.R. He submitted that the investigation which has been done by various investigating agencies were not at all carried out in a fair manner, therefore, the same was transferred time and again no doubt at the instance of the informant which he tried to demonstrate from some documents but as the applicants are members of police force and the investigating agency has deliberately tried to save them from the criminal liability which has been fasten on them. He submitted that the eye witnesses of the incident, namely, Arun Kumar, Prem Pal Singh, Bhura Singh and the sister of the deceased Smt. Munesh Kumari and brother Ramu have supported the prosecution case before the various investigating agencies but then too final reports was submitted in the case. He argued that the arguments which has been raised by the learned counsel for the applicant is only the defence version of the applicants which can not be considered by this Court in the present 482 Cr.P.C. Application and the same can be well considered in a regular trial before the trial court. He submitted that so far as the protection under Section 197 Cr.P.C. to the applicants are concerned it has not at all required in the present case as it is an admitted case of the applicants that they had visited the house of the sister of the two persons, namely, Ramu and Shyamu, who were present along with informant in the house and they were forcibly taken to police out post Talanagari where third degree method was adopted on the deceased Shyamu under the police custody and he was taken to the J.N. Medical College, Aligarh when his condition deteriorated and where he was declared dead. As per viscera report, poison was also found in his viscera which shows that his death was unnatural which has taken place in police custody. Therefore, final report which was submitted by different investigating agency shows that they had tried to save the applicants from the charge levelled against them and have carried out only basic investigation. He further argued that the act and conduct of the applicants in no manner can be protected under Section 197 Cr.P.C. The deceased Shyamu had already got bailed out. He was not wanted in any case, hence he taken away forcibly taken by the police personnel from his sister's house along with his brother Ramu shows that their act was not in discharge of their official duties. Hence, no sanction is required under Section 197 Cr.P.C. prior to their prosecution. He submitted that the case laws of the Apex Court cited by the learned counsel for the applicants are distinguishable from the facts and circumstances of the case. He argued that the learned Magistrate was right in rejecting the final report and allowing the protest petition of the informant and summoned the applicants for facing trial under Sections 147, 342, 302 I.P.C. which was rightly confirmed by the Lower Revisional Court and the present application has no merit and may be dismissed.

11. Considering the submissions advanced by learned counsel for the parties and perused the material brought on record.

12. Admittedly, it appears from the record that the applicants, who are members of S.O.G. Unit reached the house of two accused Ramu and Shyamu on 15.4.2012 at 11.30 a.m. where the informant along with his two brothers had gone to meet his sister Smt. Munesh Kumari while they were having conversation, the brother of the informant, Ramu and Shyamu were forcibly taken by police personnel, though the family members and informant had objected about the act of the applicants and informed that the deceased Shyamu was not wanted in any criminal case and he was on bail in all the cases but he was also taken by the police along with Ramu and brought to the police out post Talanagari where they were confined and tortured and the deceased Shyamu, who died unnatural death and it was applicants who have shifted the accused Shyamu to J.N. Medical College, Aligarh where he was declared dead. The case which has been set up by the applicants that the deceased Shyamu himself consumed poison as he was mentally frustrated and his brother Ramu had blamed for not obtaining his bail, appears to be their defence version and to examine their defence in the present 482 Cr.P.C. Application is not proper for this Court in exercise of its inherent power under Section 482 Cr.P.C. and their defence has to be adjudged by the trial court in a regular trial on the basis of evidence adduced by the parties. No doubt thrice final report was submitted by the investigating agencies in favour of the applicants but the said investigation cannot be said to be fair and impartial as the applicants belongs to the police force and it is a quite natural that the investigating agencies may have also been influenced by them. It appears from the record that the eye witnesses, who have followed the informant (since deceased) and his sister Smt. Munesh Kumari and brother Ramu, and other person of the village, who acquitting the informant and followed the police personnel who were taking the two brothers illegally in the Bolero vehicle. Arun Kumar, Prem Pal Singh, Bhura Singh have supported the prosecution case and objected illegally and forcibly taking of the deceased Shyamu with Ramu, who was on bail and not wanted in any criminal case shows that the act and conduct of the applicants certainly cannot said to be in discharge of their official duties. Hence, the requirement under Section 197 Cr.P.C. for sanction to prosecute the applicants from the competent authority has to be obtained does not fall to reason. Hence, the impugned order passed by the courts below does not suffer from any irregularity, illegality or jurisdictional error, hence, no interference is required by this Court in exercise of its power under Section 482 Cr.P.C. The prayer for quashing the impugned orders are hereby refused.

13. The present application lacks merits and is accordingly, dismissed.

14. Interim order stands vacated.