
(2010) 09 AHC CK 0617

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 28006 of 2010

Ghansyam Dubey @ Litile and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 01-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 2(d), 482
Penal Code, 1860 (IPC) — Section 323, 504, 506

Citation : (2013) 4 ADJ 474

Hon'ble Judges : Bala Krishna Narayana, J

Bench : Single Bench

Advocate : Ajay Kumar Shukla, for the Appellant;

Judgement

Bala Krishna Narayana, J.—Heard learned counsel for the applicant and learned AGA for the State.

This is an application u/s 482 Cr.P.C. for quashing the charge-sheet in case No. 1850 of 2009, under Sections 323, 504 and 506 I.P.C., P.S. Sujanganj, District Jaunpur arising out of N.C.R. No. 65 of 2009 (State v. Ghanshyam and others) pending in the Court of J.M. IInd Jaunpur.

The facts relevant for disposal of this application are that on 10.6.2009, the opposite party lodged a report against the applicants which was registered as N.C.R. No. 65 of 2009, u/s 323, 504 and 506 I.P.C. Thereafter opposite party No. 2 moved an application u/s 155(2) Cr.P.C. before the Judicial Magistrate IInd Jaunpur for investigating the N.C.R. No. 65 of 2009. The Judicial Magistrate, IInd, Jaunpur vide order dated 17.6.2009 directed the concerned police station to investigate the matter. After investigation, I.O. submitted a charge-sheet against the applicant and three other persons dated 5.7.2009, u/s 323, 504 and 506 I.P.C. copy whereof is filed as Annexure 4 to the application and on that charge-sheet the Judicial Magistrate IInd, Jaunpur has taken cognizance. Aggrieved with that order of taking cognisance, the applicant has filed this application u/s 482 Cr.P.C. before this Court.

2. It is to be seen that the charge-sheet has been submitted under Sections 323, 504 and 506 I.P.C. The offences under Sections 323, 504 and 506 I.P.C. were all non-cognizable and bailable, but the offence u/s 506 I.P.C. was made cognizable and non-bailable vide, the U.P. Government Notification No. 777/VIII-94(2)-87 dated July 31, 1989. However, this notification was held to be illegal and ultra-vires by a Division Bench judgment of this Court in the case of "Virendra Singh and others v. State of U.P. and others". So now the legal position is that the offence under Sections 323, 504 and 506 I.P.C. are bailable and non-cognizable. It has been provided in the explanation to Section 2(d) of the Criminal Procedure Code that a report made by the police officer in a case which discloses, after investigation, the commission of a non-cognisable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant. In view of this explanation, the charge-sheet submitted by the police in the above case under Sections 323, 504 and 506 I.P.C. could not be treated to be police case, but it would be deemed to be a complaint and the police officer who submitted the charge-sheet is to be deemed to be the complainant. As such, the order passed by the learned Magistrate for taking cognizance on the charge-sheet as a state case is illegal and is liable to be set aside.

The application u/s 482 Cr.P.C. is therefore, allowed to the extent that the order passed by the Judicial Magistrate on the charge-sheet in Case No. 1850 of 2009 arising out of N.C.R. No. 65 of 2009, under Sections 323, 504, 506 I.P.C. I.P.C. P.S. Sujanganj, District Jaunpur is set aside and the above charge-sheet shall be treated to be a complaint u/s 506 I.P.C. and the Magistrate concerned shall follow the procedure prescribed under the Criminal Procedure Code for taking action, on the complaint.