

(2006) 05 AHC CK 0007

In the Allahabad High Court

Case No : Criminal Misc. Application No. 5169 of 2006

Gulzar Ahmad and Others

APPELLANT

Vs

State of U.P. and Mohd. Mukeem Khan

RESPONDENT

Date of Decision : 19-05-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(2), 173(8)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (2006) 05 AHC CK 0007

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Advocate : V.P. Srivastava and Alpana Dwivedi, for the Appellant; A.G.A., for the Respondent

Judgement

Ravindra Singh, J.—Heard Sri V.P. Srivastava, Senior Advocate assisted by Alpana Dwivedi, learned Counsel for the applicants and the learned A.G.A.

2. This application has been filed by the applicants Gulzar, Ikrar, Arif Ali, Ahmad Ali, Hazi Mustaq Ali Khan, Mohd. Yaseen alias Jaggu, Mohd. Shakeel Khan alias Phool Miyan with a prayer that the proceedings of case No. 2069 of 2005 State v. Gulzar and Ors. arising out of the charge sheet submitted in case Crime No. 343 of 2005 under Sections 147, 148, 149, 307 and 302 I.P.C. P.S. Bhongaon district Mainpuri, pending in the court of learned C.J.M. Mainpuri and the order dated 14.9.2005 and 28.2.2006 passed by the learned C.J.M. Mainpuri may be quashed.

3. It is contended by the learned Counsel for the applicants that in the present case local police has submitted charge sheet but the State Government has referred the matter to the C.B.C.I.D. for doing further the investigation, which is pending. But the order of the Government referring the matter to the C.B.C.T.D. for investigation is under challenge before this Court, in Criminal Misc. in writ petition No. 12719 of 2005, in which it has been ordered that "till further orders inquiry by the C.B.C.I.D. may go on but they will not file any report in the court. 1 In such a situation no report has been filed by the C.B.C.I.D. in the court

concerned. Therefore, the aforesaid criminal proceedings may be quashed.

4. It is opposed by the learned A.G.A. by submitting that even the report of the C.B.C.I.D. Is submitted in favour of the applicants, they will have to face the trial because the learned magistrate concerned has already taken cognizance on the police report submitted u/s 173(2) Cr.P.C.

5. Considering the facts and circumstances of this case and the submissions made by the learned Counsel for the applicants and the learned A.G.A. and from the perusal of the record, it appears that in the present case F.I.R. was lodged by Mohd. Muqem Khan on 9.6.2005 at about 11.15 pm. in respect of the incident which had occurred on 9.6.2005 at about 10.30 p.m., the F.I.R. was lodged against the applicants under Sections 147, 148, 149, 307, 302 I.P.C. in case crime No. 343 of 2005 P.S. Bhongaon district Mainpuri, in the present case one Shagir Ahmad, Advocate, has been shot dead by the applicants, the matter was investigated by the local police and after collecting the material submitted the charge sheet against the applicants, on the basis of that charge sheet the learned C.J.M. Mainpuri has taken cognizance on 14.9.2005 and summoned the applicants to face the trial. Thereafter, at the instance of the applicants the State of U.P. has decided to entrust the matter for investigation to C.B.C.I.D. And the decision has been communicated to the Director General of C.B.C.I.D. Vide letter dated 16.1 1.2005. Thereafter, on behalf of the applicants an application dated 27.2.2006 has been moved in the court of the learned C.J.M. Mainpuri with a prayer that cognizance order dated 14.9.2005 may be recalled or set aside because the matter has been entrusted to the C.B.C.I.D. for doing the investigation, which is still pending and N.B.W. issued against the applicants may also be recalled, but the same was rejected by the learned C.J.M. on 28.2.2006. The order of the State Government entrusting the investigation to the C.B.C.I.D. has been challenged by the complainant Sri Mohd. Muqem Khan by way of filing Criminal Misc. Writ Petition NO. 12719 of 2006 which is still pending From the perusal of the orders dated 14.9.2005 and 28.2.2006 passed by the learned C.J.M., it appears, that the impugned orders are not suffering from any illegality or irregularity, "because in any criminal matter if the cognizance has been taken by the magistrate on the basis of the police report submitted u/s 173(2) Cr.P.C., thereafter the matter is referred to further investigation will not effect the order of cognizance but the report submitted u/s 173(8) Cr.P.C. may be used only for corroboration and contradiction purposes, even the report of further investigation shows that the accused has not committed alleged offence even then it will not effect the order of cognizance in any manner. Therefore, on the basis of entrusting the matter to further investigation or its report shall not be any ground for setting the order of cognizance or quashing the criminal proceedings. Therefore, the prayer for quashing the criminal proceedings and the impugned orders dated 14.9.2005 and 28.2.2006 is refused.

6. It is further contended by the learned Counsel for the applicant that the applicants have moved stay vacation application before this Court in writ petition

No. 12719 of 2005. The applicants are peace loving persons they want to appear before the court concerned and they undertake that they shall appear before the court concerned on or before 10th July, 2006. Till then the N.B.W. issued against them may be kept in abeyance.

7. However, is directed the applicants shall appear before the court concerned on or before 10th July, 2006. Till then the N.B.W. issued against them shall be kept in abeyance.