
(2012) 09 AHC CK 0188

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 3106 of 2010

Janki Verma and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378, 407, 482

Citation : (2012) 09 AHC CK 0188

Hon'ble Judges : Sudhir Kumar Saxena, J

Final Decision : Dismissed

Judgement

Sudhir Kumar Saxena, J.—By means of this petition, petitioners have challenged the order dated 22.08.2009 passed by Chief Judicial Magistrate, Ambedkar Nagar in Final Report Case No. 119 of 2009 in reference to Case Crime No. 1428 of 2008 under Sections 302/201 I.P.C., Police Station Akbarpur Kotwali, District Ambedkar Nagar.

2. From the record, it appears that F.I.R. was lodged by Smt. Manju Verma on 19.12.2008 in Police Station Akbarpur Kotwali, District Ambedkar Nagar alleging that her husband working in Eicher Agency, Akbarpur had gone for duty on 11th August, 2008 but did not come back. On 12th October, 2008 body of her husband in the shape of skeleton was recovered from the paddy field of Ram Badan Verma. She suspected that Janki, Arvind, Ashok, Gangole and Ram Sahai had murdered her husband.

3. Postmortem was done on 13.10.2008 but cause of death could not be ascertained. Right humerus and right femur were preserved. Investigating Officer submitted Final Report on 29.12.2008 observing that husband of informant died of drowning and that Smt. Manju Verma (complainant) has falsely implicated Janki Verma and others.

4. Smt. Manju Verma filed protest petition pointing out certain infirmities in the investigation. Learned Magistrate rejected the final report and summoned the

accused persons treating it a State case under Sections 302/201 I.P.C. This very order passed on 22.08.2009 has been challenged before this Court by Janki Verma, Arvind, Ashok Kumar and Gangole, accused named in the F.I.R.

5. Counter affidavit has been filed by Smt. Manju Verma denying the allegations made in the petition and stating that Investigating Officer in collusion with the accused persons did not investigate the matter properly and submitted final report observing that her husband was habitual drunkard, fell in the field during rains and drowned there.

6. She submitted that it is a preplanned murder. Investigating Officer did not collect the evidence that water in the paddy field did not stagnate for more than two months, reducing the body of her husband into skeleton, which was not noticed by anybody for two months i.e. by the field owners or neighbours.

7. Counter affidavit has been filed by Sri Ashok Kumar Shukla, InCharge, Police Station Kotwali Akbarpur, Ambedkar Nagar alleging therein that Chief Judicial Magistrate, Ambedkar Nagar has taken cognizance against the accused persons after applying the judicial mind and there is no error in the order of summoning the accused persons.

8. In the rejoinder affidavit allegations made in the counter affidavit have been reiterated.

9. Learned counsel for the petitioners challenged the impugned order on the ground that statements recorded by the Investigating Officer did show that deceased Jagpat Verma was a drunkard. Sometimes he would be found lying on the way in an inebriated condition. Body of the deceased was found on 12.10.2008 in the field of Ram Badan Verma in the shape of skeleton but driving licence was also found nearby.

10. Learned counsel for the petitioners submits that there was no evidence before the Chief Judicial Magistrate to reject the closure report and to summon the petitioners.

11. It is submitted on behalf of the State by Km. Nand Prabha Shukla, learned A.G.A. that accused persons are named in the F.I.R. It is improbable that nobody would see a person lying in the paddy field for two months because water would remain there for all these two months so as to conceal the dead body of Jagpat Verma. Body was reduced into skeleton but driving licence found near the dead body of the deceased was intact ? Investigation was per se tainted, she submitted.

12. It was further stated by learned A.G.A. that there is no error in the impugned order as it was open to the Magistrate to summon the accused persons on the basis of material collected by Police.

13. Learned counsel cited a decision of this Court given in the case of Kallu and others Vs. State of U.P. and another [2010 (69) ACC 780]. In para 8 of the

judgment stated as under :

"In the present case, the impugned order dated 14.12.2009 (Annexure5) shows that the learned Magistrate had taken cognizance under Section 190(1)(b) Cr.P.C. after rejecting the final report on the basis of the affidavits of the complainant and his witnesses and injury report filed by the complainant in support of the protest petition against final report, which is not permissible under law."

14. He further relied upon the decision of Division Bench of this Court rendered in the case of Mohammad Yusuf and others Vs. State of U.P. and another [2007(59) ACC 878].

15. The similar view has been taken by this Court in the case of Vimlesh Vs. State of U.P. and another [2010(69) ACC 765]. Para 7 of the judgment is stated as under :

"Having given my thoughtful consideration to the rival submissions made by the learned counsel for the parties, I find force in the submission of the learned counsel for the applicant that cognizance under Section 190(1)(b) Cr.P.C. cannot be taken on the basis of the extraneous material like affidavits filed in support of the protest petition against final report and if the material in the case diary is not sufficient for summoning the accused person, then the procedure laid down in Chapter XV Cr. P.C. has to be followed by the Magistrate after treating the protest petition as complaint, as held by the Division Bench of this Court in Pakhando case (supra)."

16. In the case of Mohd. Yusuf and others Vs. State of U.P. and another [2007(59) ACC 878], this Court observed that cognizance may be taken on the basis of accompanying affidavits but this Court directed the Magistrate to treat the protest petition as complaint.

17. In the case of Pakhando and others Vs. State of U.P. and others [2001(43) ACC 1096], it is mentioned that Magistrate can issue the process under Section 190(1)(b) Cr.P.C. without being bound by the conclusions of the investigating agency if he is satisfied that upon the facts discovered or unearthed by the police, there is sufficient ground to proceed. Magistrate is not bound to follow the procedure of complaint case.

18. Similarly, in the case of Ram Ayodhya and others Vs. State of U.P. and another [2012(1) ALJ 240], this Court has taken the following view :

"In other words at the stage of taking cognizance what is required from the Magistrate is to apply his mind to the facts of the case including the evidence collected during the investigation and to see whether or not there is sufficient ground (prima facie case) to proceed with the case. The law does not require the Magistrate to record reasons for taking cognizance of an offence."

19. On the strength of above decisions, learned counsel for the petitioners submits that informant Smt. Manju Verma filed affidavit alongwith protest

petition whereupon summoning order has been passed, as such the same is not sustainable.

20. From the above judgments, it is apparent that Magistrate is not bound by the conclusion of the Investigating Agency. Investigating Officer submitted closure report. On the basis of material collected during investigation, he can summon the accused persons straightway under Section 190(1)(b) Cr.P.C. For this he can rely on no other material except the material collected by the Police.

21. Cognizance under Section 190(1)(b) Cr.P.C. cannot be taken on the basis of the extraneous material like affidavits filed in support of the protest petition.

22. I have carefully perused the impugned order from which it appears that protest petition was filed by the informant stating that within ten days Investigating Officer submitted final report on the basis of imaginary facts. He has not done the investigation thoroughly. This protest petition was supported by an affidavit. Learned Magistrate passed the order taking cognizance, relevant part of the order is quoted hereinbelow :

23. From the above discussion, it is apparent that learned Magistrate has rejected the final report after perusing the case diary. He has not relied upon the affidavit filed by the complainant.

24. In these circumstances, it cannot be said that Magistrate has considered any extraneous material before proceeding under Section 190(1)(b) of Cr.P.C. As held in the case of Pakhandi (supra), M/s India Carat Private Ltd. Vs. State of Karnataka and another AIR 1989 SC 885 and Nupur Talwar Vs. C.B.I. 2012 ACC 481 learned Magistrate was competent to take cognizance after perusing the material collected by the Police, in exercise of power under Section 190(1)(b) of Cr.P.C.

25. In view of the above, impugned order dated 22.08.2009 passed by Chief Judicial Magistrate, Ambedkar Nagar is correct and no interference is called for under Section 482 Cr.P.C.

26. Petition has no merits and is accordingly dismissed.