
(1987) 04 AHC CK 0019

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 4876 of 1987

Kailash Chand Sharma

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 27-04-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 482
Penal Code, 1860 (IPC) — Section 201, 302, 364

Citation : (1987) 04 AHC CK 0019

Hon'ble Judges : S.I. Jafri, J

Bench : Single Bench

Advocate : Dileep Kumar and Jagdish Singh Sengar, for the Appellant;

Judgement

S.I. Jafri, J.—This is an application u/s 482 Code of Criminal Procedure seeking thereby the relief of quashing the F.I.R. and the investigation in case crime No. 109 of 1987 against the applicant u/s 364/302/201 IPC.

2. I have heard the learned Counsel for the applicant as well as the learned Counsel for the State.

3. It has been vehemently contended by the learned Counsel for the applicant that the applicant had not been nominated in the first First Information Report lodged u/s 364 IPC at Police Station Civil Lines Meerut with legard to disappearance of Sri Subhash Chand Sethi, an Advocate practising at District Courts Meerut on 19th. Lateron another report was lodged by the same complainant on 22nd March 1987 at Police Station Civil Lines Meerut alleging therein that the applicant and the deceased had been seen going in a Car. Subsequently the dead body of the deceased was recovered on 19th March 1987 and post mortem examination on the corpse was carried on 20th March, 1987. According to the Post Mortem Examination Report, the deceased had succumbed to his injuries between 16th and 17th of March, 1987. Thereafter as stated above on 22nd March another report came into being at Police Station Civil Lines Meerut which alleges that the deceased had been witneseed in the company of

the applicant and others in a Car in the City of Meerut on 18th March 1987. Ultimately it has been submitted that in the back-ground of the above circumstances, the applicant/accused has been falsely implicated in the murder case of the aforesaid Advocate.

4. It has also been canvassed for consideration by the learned Counsel for the applicant that in view of the post mortem report, the allegations of the complainant that the deceased was seen in the company of the applicant and others on 18th March 1987 in a Car do not hold water and stood falsified. It has further been brought to the attention of the Court that the Advocates at District Courts at Meerut vigorously protested at the sad killing of the aforesaid Advocate and the Bar Association had resolved through a resolution directing its members not to defend any accused in this case.

5. I am fully conscious of the case decided by a Division Bench of this Court reported in *Puttan v. State* 1987 AWC 404 where it has been held that the courts have no power u/s 482 Code of Criminal Procedure to interfere with the investigation by the Police or staying of arrest in cognizable cases. However, reliance has been placed on *R.P. Kapur Vs. The State of Punjab*, by the learned Counsel for the applicant. The relevant para of which is reproduced below:

There is no doubt that this inherent power cannot be exercised in regard to matters specifically covered by the other provisions of the Code. In the present case the Magistrate before whom the Police Report has been filed u/s 173 of the Code has yet not applied his mind to the merits of the said report and it may be assumed in favour of the Appellant that his request for the quashing of the proceedings is not at the present stage covered by any specific provision of the code.

6. A further contention has been advanced by the learned Counsel for the applicant that the life of the applicant/accused is exposed to extreme danger in case the applicant is made to surrender at Meerut and in its wake, the surrender of the applicant at Meerut, may pose law and order problem at Meerut and in the circumstances, any occurrence of a cognizable offence cannot be ruled out inside the District Court at Meerut if the applicant surrenders before the Court at Meerut.

7. Having considered the principles laid down in *R.P. Kapoor's* case and also the facts and circumstances stated above, I deem it proper to direct the Chief Judicial Magistrate Allahabad to entertain the surrender application of the applicant, if any such application, is moved by the applicant in his Court.

8. In the result, the Chief Judicial Magistrate, Allahabad is directed to entertain the surrender application of the applicant, if any such application is moved by the applicant before him and the applicant on his surrender shall be taken into custody forthwith by the aforesaid Chief Judicial Magistrate, Allahabad in case Crime No. 109 of 1987, *State v. Kailash Chand Sharma and Ors.* u/s 364/302/201 IPC Police Lines Meerut and he shall be sent to Central Jail Naini. I

hereby issue notice to the learned Government Advocate to obtain instructions from Meerut, regarding the facts stated above in order to oppose the bail of the applicant.

9. Learned Government Advocate has been furnished with two copies of the application. This application shall be listed for orders on 18th May 1987 and the learned Counsel for the applicant is directed to intimate to this Court by way of a supplementary affidavit, the date on which the applicant surrenders before the learned Chief Judicial Magistrate Allahabad. The learned Government Advocate shall also be supplied with two copies of the said affidavit. It is further specified that on the surrender application, if any filed before the Chief Judicial Magistrate, Allahabad the applicant/accused must be personally identified by his Advocate.

10. Office is directed to supply a certified copy of this order to the learned Counsel for the applicant within two days from today on payment of usual charges. Office is further directed to supply a copy of this order to the learned Counsel for the State also within the aforesaid period free of any charge. Let a copy of this order be also sent to the Chief Judicial Magistrate, Allahabad within two days from today for compliance by the aforesaid Magistrate.

11. However, it is clarified that any observation contained in the body of this order shall not in any way affect the merits of the case during trial. This order directing the Chief Judicial Magistrate, Allahabad to entertain the surrender application of the applicant has been passed as a measure with abundant caution against any breach of peace or occurrence of grave dimension within the precincts of the District Courts at Meerut, as this Court has been informed, the atmosphere at District Courts Meerut is surcharged with emotions and resentment.