
(2008) 04 AHC CK 0086
In the Allahabad High Court

Khalid alias Guddu and Others

APPELLANT

Vs

Fahad and State of U.P.

RESPONDENT

Date of Decision : 30-04-2008

Acts Referred:

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

Citation : (2008) 04 AHC CK 0086

Hon'ble Judges : Amar Saran, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Amar Saran, J.—Heard learned Counsel for the applicants and the learned A.G.A.

2. This application has been filed for setting aside an order dated 25.1.2008 passed by the A.C.J.M. Court No. 10, Azamgarh, in Case No. 3352 of 2007 (State v. Khalid and Ors.) under Sections 147, 148, 149, 307 IPC, whereby the learned Sessions Judge has rejected the two applications of the applicants dated 21.1.08 praying that the order taking cognizance be recalled and that the pellets be taken out from the body of the injured Fahad and the matter sent to the ballistic expert for his opinion and that further investigation be done.

3. It is contended by the learned Counsel for the applicants that earlier on the application of the Investigating Officer u/s 173(8) Cr.P.C., after submission of the earlier final report dated 27.9.2007 an order for reinvestigation was passed by the learned A.C.J.M., 1st, Court No. 10, Azamgarh on 16.10.2007 and no such order for re-investigation ought to have been passed. This order was challenged in an earlier Criminal Misc. Application No. 28288 of 2007 on 5.12.2007, wherein Hon'ble S.S. Kulshrehta J. has observed that so far as the order dated 16.10.2007 "relates to the directions for making reinvestigation is concerned, is deleted and in its place the expression "further investigation" shall be deemed to have been passed by the learned Magistrate. The application is disposed of accordingly."

4. It is contended by the learned Counsel for the applicants that the net import of the order of this Court dated 5.12.07 was to direct the investigating officer to conduct fresh investigation, and after this order, additional investigation should have been conducted by the Investigating Officer, but the ACJM took cognizance on the basis of the charge sheet dated 11.11.2007, which had already been submitted pursuant to the order for reinvestigation passed by the A.C.J.M. on 16.10.2007 and this procedure was illegal. I am not in agreement with this submission of the learned Counsel for the applicants. I find no direction in the order of this Court dated 5.12.2007 for any fresh investigation in the future, but as the above quoted portion of the order clearly shows that this Court has simply observed in the said order that in place of the word "reinvestigation", the expression "further investigation" should be deemed to have been read in the order passed by the learned Magistrate at the initial stage, i.e. on 16.10.07. Therefore, there was no illegality if no further investigation was conducted by the Magistrate after the order of the High Court dated 5.12.07, or in his charge sheet dated 11.11.07 which had already been submitted by the Investigating Officer after the order of the Magistrate dated 16.10.2007 and it was also not fatal for the prosecution that the charge sheet had been submitted hastily.

5. In the case of Hemant Dhasmane Vs. Central Bureau of Investigation and Another, the Apex Court has considered the wide amplitude of the powers u/s 173(8) Cr.P.C. of the police to further investigate a case on its own volition or after obtaining a direction from the Magistrate, as any further investigation only serves the ends of justice. The Investigating Officer is free to consider the earlier material or to look at fresh material. It would be useful in this connection to extract paragraph 16 of Hemant Dhasmana case which reads as follows:

16. Although the said Sub-section does not, in specific terms, mention about the powers of the Court to order further investigation the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of the Court. When any such order is passed by a Court which has the jurisdiction to do so it would not be a proper exercise of revisional powers to interfere therewith because the further investigation would only be for the ends of justice. After the further investigation, the authority conducting such investigation can either reach the same conclusion and reiterate it or it can reach a different conclusion. During such extended investigation the officers can either act on the same materials or on other materials which may come to their notice. It is for the investigating agency to exercise its power when it is put back to that track. If they come to the same conclusion it is of added advantage to the persons against whom the allegations were made, and if the allegations are found false again the complainant would be in trouble.

(Emphasis supplied)

6. So far as the other prayer in the second application 21.1.2008 that the pellets which came out in the body of the injured be taken out for sending to the Ballistic Expert for opinion was concerned, it was observed in the impugned order

dated 25.1.2008 that a report of the Ballistic Expert dated 28.11.2007 has been filed. Also the Magistrate has rightly observed that there was no power with the Magistrate for interfering with the process of investigation as has been well settled in a catena of decisions of the High Court as well as the Supreme Court.

7. I also find that in this case there was an injured witness who claimed to have been fired upon and a radio opaque shadow was seen in the right arm on X-ray examination. There is also a report of the ballistic expert as noted in the impugned order. Moreover in the case reported in Union of India (UOI) Vs. Prakash P. Hinduja and Another, it has been observed that even if there is an irregularity or illegality in the process of investigation that alone will not provide a ground for interfering with an order taking cognizance unless miscarriage of justice is shown to have resulted. After citing a passage from H.N. Rishbud and Inder Singh Vs. The State of Delhi, observes as follows in paragraph 20:

The Court after referring to Prabhu v. Emperor AIR 1944 SC 73 and Lumbhardar Zutshi v. King AIR 1950 PC 26 held that if cognizance is in fact taken on a police report initiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial, which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice and that an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial.

(Emphasis supplied).

8. For all these reasons I find no illegality in the impugned order of the A.C.J.M. Court No. 10, dated 25.1.08 refusing to recall the order taking cognizance on the basis of the charge sheet dated 11.11.2007 or the refusal of the Court concerned to accede to the prayer for getting some pellet extracted from the body of the injured Fahad and for again sending it to the Ballistic Expert or refusing to issue any further directions to the investigating agency.

9. There is no force in this application and it is accordingly, rejected.