

(2007) 01 AHC CK 0013
In the Allahabad High Court
Case No : Criminal M.W.P. No. 947 of 2007

Kumar Mangalam Birla

APPELLANT

Vs

Addl. Chief Judicial Magistrate-I and Others

RESPONDENT

Date of Decision : 25-01-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320

Penal Code, 1860 (IPC) — Section 120B, 418, 420, 465, 467

Citation : (2007) 2 ACR 2107 : (2007) 5 RCR(Criminal) 663

Hon'ble Judges : R.K. Rastogi, J

Bench : Single Bench

Advocate : Vinai Saran and Amit Saxena, for the Appellant; Umesh Vats and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

R.K. Rastogi, J.—This is a writ petition for quashing the proceedings of Criminal Complaint Case No. 1795 of 1997, Ganga Sahai Modi v. Kumar Manglam and others, pending in the court of the Additional Chief Judicial Magistrate I, Bareilly and the order dated 3.1.2007, passed by the Sessions Judge, Bareilly in the criminal revision preferred against the summoning order passed in the above case.

2. I have heard Sri Vinai Saran and Sri Amit Saxena, learned Counsel for the Petitioner and Sri Umesh Vats, learned Counsel for Respondent No. 3.

3. In this petition the Petitioner has filed a copy of an application moved by Ganga Sahai Modi, Respondent No. 3 before the Additional Chief Judicial Magistrate Ist, Bareilly, on 18.1.2007 in which he had stated that he has become too old and weak and the case was of the year 1997 and the accused have been summoned in the case but no further proceeding has taken place. He had undergone operation of his eyes twice and was not in a position to proceed with the case due to his ill health and old age, so it was prayed that the case be allowed to be withdrawn and the same may be dismissed as withdrawn. A copy

of the affidavit filed in support of that application was also presented in this writ petition. Both these documents are Annexure-3 to the writ petition.

4. Respondent No. 3 Ganga Sahai Modi, who is complainant in the above complaint case, has today filed his affidavit in this Court in which he has confirmed the allegations made in his affidavit filed before the Additional Chief Judicial Magistrate I, Bareilly and has prayed that he has got no objection in allowing the prayer of the Petitioner.

5. The learned A.G.A. appearing on behalf of Respondent Nos. 1 and 2 submitted that since it is a private complaint case he has got no objection to grant of the prayer of the Petitioner.

6. It may be mentioned that the accused Petitioner was summoned by the Magistrate under Sections 418, 465, 467, 468 and 471, I.P.C. It may also be mentioned that u/s 320, Cr. P.C. all these offences (except that u/s 418, I.P.C.) are not compoundable.

7. The learned Counsel for the Petitioner produced before me a copy of judgment dated 22.11.2004 of this Court in Crl. Misc. Application No. 6168 of 2004, Jayabrata Bhattacharjee v. State of U.P. and another. A perusal of this judgment shows that this was a complaint case filed by the complainant against the accused persons under Sections 420, 467, 468, 471, 504, 506, 470, 477A and 120B, I.P.C. and parties had compromised the matter. The offences were non-compoundable, but the Court observed that:

Where, in the opinion of the court, chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may, while taking into consideration the special facts of a case, also quash the proceedings.

8. The same is the position in the present case. The complainant, who was offended by the impugned act of the accused persons and was aggrieved with their conduct, does not want to pursue the case and as such chances of an ultimate conviction are bleak, no useful purpose is likely to be served by allowing the criminal prosecution to continue. It is also to be seen that in the present case offence u/s 418, I.P.C. is compoundable with the permission of the Court if the person cheated is ready to compound the offence. In the present case, the person cheated is Ganga Sahai Modi Respondent No. 3 and he has moved an application to withdraw the complaint, so the case stands on a better footing as compared to the case of Jayabrata Bhattacharjee v. State of U.P. and another, and the above ruling applies with full force to the facts of the present case.

9. Therefore, taking into consideration the facts and circumstances of the case, I allow this writ petition and quash the proceedings of Criminal Complaint Case No. 1795 of 1997, Ganga Sahai Modi v. Kumar Manglam and others, pending in the court of the Additional Chief Judicial Magistrate Ist, Bareilly, as well as the order dated 3.1.2007, passed by the Sessions Judge, Bareilly, in the criminal revision

filed against the summoning order in the above case and the complaint filed by the complainant-Respondent No. 3 in the present writ petition is dismissed as withdrawn.