

(1998) 07 AHC CK 0134

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 2761 of 1998

Lakhan Singh Yadav

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 30-07-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167, 167A, 190, 197, 197(3)

Citation : (1998) 2 ACR 1650

Hon'ble Judges : S.K. Phaujdar, J

Bench : Single Bench

Advocate : Prem Prakash, for the Appellant; G.A., for the Respondent

Judgement

S.K. Phaujdar, J.—The matter was heard on 28.7.1998.

2. The applicant sought intervention of this Court u/s 482, Cr. P.C. for quashing an order of cognizance passed by the Additional C.J.M., Karvi in CrI. Case No. 776/IX of 1997 and also an order by the Magistrate issuing processes u/s 82, Cr. P.C. against the present applicant.

3. The applicant happens to be a constable attached to a police station and a case u/s 302 was started against him and others for having murdered one Jagdish. It was urged in the present application that in fact Jagdish had been a notorious criminal and on 23.2.1997 he had committed a broad-day-light murder and was chased by public and police, and it was the authority of the police constable to apprehend a murderer. It was contended that the applicant could not be prosecuted without sanction as required u/s 197(3), Cr. P.C. It appears further that a charge-sheet was submitted by an investigating agency in the concerned case and only two persons were named in the charge-sheet, upon which cognizance was taken on 30.5.1997 by the A.C.J.M. It was contended further that the investigation, so far as this applicant is concerned, was still pending. The learned Counsel submitted that despite pendency of this investigation, the powers u/s 482, Cr. P.C. could be invoked to quash the

proceedings and Ram Lal's case was not the good law as it had not considered the provisions of Section 167A, Cr. P.C. as was introduced in Uttar Pradesh. It was contended that this section spoke of arrest to be made by or under any order or direction of a Magistrate and a conclusion was sought to be drawn that when this section had empowered a Magistrate to make an arrest or to direct an arrest, the contrary power to recall the arrest warrant should also lie with the Magistrate and in this light, the pronouncement in Ram Lal's case was not a good law. This submission is certainly a novel one but does not appeal to reason. Chapter 5 of the Code of Criminal Procedure speaks of arrest of persons and under this Chapter, Section 44 speaks of power of a Magistrate to arrest. This power could be exercised by a Magistrate when any offence is committed in his presence within his local jurisdiction. Section 167A simply extends the provisions of Section 167, Cr. P.C. for arrest by or under the orders of a Magistrate, otherwise it deals with arrest by police officers only and production of accused before the Magistrate. Section 167A does not create any right in the Magistrate to make an arrest and this right already stood enunciated in Section 44, Cr. P.C.

4. A perusal of the charge-sheet indicates that the Petitioner was shown as an absconder. It cannot, therefore, be accepted that no charge-sheet was submitted against him. Cognizance was taken of the offence as per Section 190, Cr. P.C. and not against any particular accused. Thus, it may not be accepted that upon the earlier charge-sheet, the Magistrate had not taken cognizance against the applicant as he had taken cognizance of the whole offence. When the present applicant was shown as an absconder, there was nothing wrong on the part of the Magistrate to have issued a proclamation against him requiring his presence in the Court. The order by which this proclamation was issued has not been placed before this Court. Even if it is accepted, for the same of argument, that the Magistrate had not taken cognizance against the applicant and an investigation against him is still pending, the Petitioner would have no locus standi to challenge the cognizance which was taken, according to him, against other co-accused persons.

5. As regards, protection u/s 197(3), Cr. P.C. it could only be observed that while it would be deemed to be the duty of a police personnel to apprehend an offender, it would be too much to opine at this stage that this right would extend to causing death of such person. Section 197 covers only those acts committed by a public servant or police personnel acting or purporting to act in the discharge of his official duty.

6. Upon all the above discussions, it is felt that no interference should be made either in the order of cognizance or in the order for issuance of proclamation against the applicant. The application stands dismissed.