
(2012) 08 AHC CK 0061

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 25147 of 2012

Lalji Dhobi

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 17-08-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 202, 203, 482
Penal Code, 1860 (IPC) — Section 120B, 147, 201, 302

Citation : (2013) 1 ACR 490 : (2012) 10 ADJ 354

Hon'ble Judges : Ramesh Sinha, J

Bench : Single Bench

Advocate : Lalji Yadav and Rajesh Yadav, for the Appellant;

Final Decision : Allowed

Judgement

Hon"ble Ramesh Sinha, J.—Heard Sri Rajesh Yadav, learned counsel for the applicant and learned A.G.A. for the State.

This 482 Cr.P.C. application has been preferred against the orders dated 8.6.2011 and 9.11.2011 respectively passed by the Chief Judicial Magistrate, Allahabad in Complaint Case No. 10252 of 2011, Lalji Dhobi v. Bachai, police station Holagarh, Allahabad by which the learned magistrate has dismissed the complaint of the applicant, who is the complainant of the case which was filed by him for summoning the accused under Sections 147, 302, 201 and 120B, I.P.C.

Brief facts of the case are that on 25.2.2011, at about 8 p.m. in the evening, the son of the complainant, namely, Mukesh, who was at his house was taken away by Bachai S/o-Pappu Patel and when he did not return, the wife of the complainant made a search for him and, she was told by her neighbour, namely, Ranjana D/o-Raj Kumar that her son's dead body was lying in a well on which she went to see her son near the well and found that the slippers of her son was lying near the well. When she looked into the well, she saw the dead body of the deceased Mukesh which was taken out from the well. It was stated in the

complaint that when the wife of the complainant went to complain about the incident to Ghanshyam and Pappu sons of Nanku, they instructed her not to complain the matter to the police otherwise herself would falsely be implicated in the present case. Thereafter they got a panchnama written and forcibly got the signature of complainant's wife on it and burnt the dead body of deceased Mukesh. When the complainant and his wife made a protest against the accused persons, they threatened them for dire consequences of their life. The complainant further stated that at the time of the incident, he was at Delhi and on receiving the information about the death of his son, he immediately returned to his village on the next day. It was further stated in the complaint that the wife of the complainant wanted that the post mortem of the deceased Mukesh should be conducted but the accused persons forcibly and hurriedly in order to suppress the truth got the dead body of the deceased burnt.

2. The complainant moved an application with the aforesaid averments u/s 156(3) Cr.P.C. before the learned C.J.M. on 22.4.2011 for directing the police officers to register a First Information Report against the accused persons.

The learned Magistrate vide order dated 8.6.2011, considered the application of the complainant and directed that the matter be registered as a complaint case and fixed the date for recording of statement u/s 200 Cr.P.C. and Section 202 Cr.P.C.

On 16.9.2011, the learned magistrate recorded the statement of the applicant u/s 200 Cr.P.C. and as witnesses his wife u/s 202 Cr.P.C. on 4.10.2011 and Smt. Shiv Kumari on 13.10.2011 respectively. The learned magistrate after recording the statements of the complainant and witnesses under Sections 200 and 202 Cr.P.C. came to the conclusion that prima facie no case for summoning the accused is made out as none of the witnesses have seen the accused persons throwing the deceased in the well, hence dismissed the complaint filed u/s 203 Cr.P.C.

3. It has been contended by the learned counsel for the applicant that the order passed by the learned magistrate dismissing the complaint filed by the applicant u/s 203 Cr.P.C. is bad in the eyes of law as the learned magistrate instead of examining the matter on the basis of complaint and the statement of the complainant and witnesses u/s 200 Cr.P.C. and the statement u/s 202 Cr.P.C., was required only to see as to whether prima facie cognizable offence is disclosed against the accused or not. He further submits that from the material on record; it was apparent that a prima facie cognizable offence was disclosed against the accused and the learned magistrate within his jurisdiction could have summoned the accused persons for trial and not doing so, he appreciated the evidence and recorded a finding of acquittal in favour of the accused persons though he was required to see whether a cognizable offence is being disclosed against the accused for summoning them or not. Hence the impugned order dated 9.11.2011 deserves to be quashed by this Court.

4. On the other hand, learned A.G.A. tried to justify the order of the learned Magistrate and argued that the impugned order does not suffer from any illegality.

5. I have considered the submissions of learned counsel for the parties. From a perusal of the application u/s 156(3) Cr.P.C. which was considered by the magistrate to be registered as a complainant and from a perusal of the statement of the complainant and its witnesses recorded u/s 200 and 202 Cr.P.C., it appears that there was evidence before the learned magistrate with respect to taking of the deceased by accused Bachai S/o-Pappu from the house of the complainant on 25.2.2011 at about 8 p.m. in the evening which has been stated by the wife of the complainant in her statement recorded u/s 202 Cr.P.C. that her son Mukesh was taken away by the son of Pappu, namely, Bachai on the date and time of incident and thereafter her son did not return. When she made a search for him, she was told by her neighbour Ranjana that the body of the deceased was lying in the well on which she went to the well and got the dead body of the deceased taken out from the well where the slippers of the deceased were also found lying. Furthermore, the wife of the applicant has further stated that when she went to complain about the said incident to the accused Pappu and Ghanshyam alongwith some villagers, they told her that if she went to the police and made any complaint about the said incident, she herself would be sent to jail and as soon as possible performed the last rights of her son thereafter burnt the dead body of the deceased near the Talab. The motive for the accused to commit the crime was that the accused Pappu had threatened her son to be eliminated because of the illicit relationship which he had developed with the inmates of the house of the accused due to which they had done to death of her son. She further complained the matter to the police and other higher authorities and sent an information to them and met them personally but no action was taken on her complaint by the police, hence she filed an application u/s 156(3) Cr.P.C. through her husband. The order passed by the learned magistrate shows that the learned magistrate has appreciated the evidence of the complainant and its witnesses and the allegation made in the complaint in a manner as he was conducting the trial of the case and came to the conclusion that there was no evidence against the accused as none of the witnesses have seen the deceased being thrown into the well, hence dismissed the complaint filed by the applicant u/s 203 Cr.P.C. In view of the above, I am of the opinion that the said order of the learned magistrate cannot be sustained in the eyes of law as the learned magistrate at the stage of issuing of process was under an obligation to examine the application u/s 156(3) of the applicant which was considered to be a complaint case and from the evidence of the complainant under Sections 202 and 200 Cr.P.C. he was only required to see whether cognizable offence is disclosed against the accused or not and having not done so, the learned magistrate has committed gross illegality in dismissing the complaint at the thresh hold.

In this view of the matter, the order dated 9.11.2011 passed by the learned

magistrate is hereby set aside and the matter is remanded to the learned magistrate to pass fresh orders in accordance with law keeping in view the aforesaid observations made hereinabove as expeditiously as possible preferably within a period of two months from the date of production of a certified copy of this order.

With the aforesaid observations, the application stands allowed.