

(2003) 01 AHC CK 0165

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 9823 of 2002

Madhusudan alias Nanha Shukla and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 17-01-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(2), 190(1)
Penal Code, 1860 (IPC) — Section 302

Citation : (2003) 1 ACR 614

Hon'ble Judges : Imtiyaz Murtaza, J

Bench : Single Bench

Advocate : A.P. Tewari and S.S. Tripathi, for the Appellant; A.G.A., for the Respondent

Judgement

Imtiyaz Murtaza, J.—The present petition has been filed for quashing of the proceedings in Crl. Case No. 6754 of 1997 and order dated 23.9.2002 and 30.9.2002 passed by Second Additional C.J.M., Gorakhpur whereby non-bailable warrant of arrest has been issued against the Petitioner. The Petitioner was accused in a case Crime No. 1052 of 1996 u/s 302, I.P.C. police station Cantt. District Gorakhpur. The investigation of the case was transferred from civil police to C.B.C.I.D. and C.B.C.I.D. had submitted charge-sheet on 26.9.1997 in the Court of C.J.M., Gorakhpur. After the submission of charge-sheet, C.B.C.I.D. had moved an application on 23.1.1998 for the cancellation of charge-sheet on the ground that Additional I.G., C.B.C.I.D., had transferred the investigation to Allahabad Division and he had also cancelled the charge-sheet. The Magistrate had issued non-bailable warrant against the Petitioner on 23.9.2002 and 30.9.2002 and aggrieved by the said orders, the Petitioner has filed this petition.

2. I have perused the order sheet filed by the Petitioner which indicates that cognizance of the offence was taken by the C.J.M. on 26.9.1997. The application for cancelling the charge-sheet was filed by the C.B.C.I.D. on 23.1.1998 and prior to that C.J.M., was seized with the matter and the Magistrate was

competent to proceed with the case. The orders issuing non-bailable warrants are in accordance with law and there is no illegality in the said orders. A perusal of the order sheet indicates that the Magistrate is adjourning the case on the ground that further investigation is pending and the case is pending for the last about 5 years in the Court of C.J.M. The conduct of the C.J.M. in adjourning the case is not in accordance with law and he is adjourning the case unnecessarily. Once cognizance is taken by the Magistrate, he is not bound by the opinion of the investigating officer. In the case of *State of Maharashtra v. Sharadchandra Vinayak Dongre and Ors.* 1995 SCC 16, it is observed that:

The purpose of the submission of the police report with the details as mentioned above, is to enable the Magistrate to satisfy himself, whether on the basis of the report and the material filed along with the police report, a case for taking cognizance has been made out or not. After applying his mind to the police report and the material submitted therewith, if the Magistrate is satisfied that cognizance of the offence is required to be taken, he shall proceed further in accordance with the provisions of the Code of Criminal Procedure. Section 190(1) (b), Cr. P.C., provides that a Magistrate has the power to take cognizance upon a police report of such facts as are provided therein on being satisfied that the case is a fit one for taking cognizance of the offence. Therefore, if the police report and the material filed therewith is sufficient to satisfy the Magistrate that he should take cognizance, his power is not fettered by the label which the investigating agency chooses to give to the report submitted by it u/s 173(2), Cr. P.C. Merely, because the prosecution had filed an application, after submission of the charge-sheet, seeking permission to file "supplementary charge-sheet" it could not affect the jurisdiction of the Magistrate to take cognizance, if he was otherwise satisfied from the material placed before him along with the charge-sheet that cognizance of the offence was required to be taken. It is the jurisdiction of the Magistrate and Magistrate alone to decide whether the material placed by the prosecution with the report (charge-sheet) was sufficient to take cognizance or not. The power of the Magistrate to take cognizance cannot be controlled by the investigating agency, whose duty is only to investigate and place the facts and the evidence before the Magistrate.

3. In view of the above mentioned decision, the petition has got no force and is dismissed and interim order is vacated.

4. The C.J.M., Gorakhpur is directed to proceed with the case in accordance with law immediately and the Sessions Judge is also directed to conclude the trial of *State v. Madhusudan Shukla* CrI. Case No. 6354 of 1997 u/s 302, I.P.C. police station Cantt. pending in the Court of Second Additional C.J.M., Gorakhpur within six months including committal proceedings, if possible from the date of production of certified copy of the order.

Office is also directed to send a copy of this order to Sessions Judge and C.J.M. concerned for necessary compliance of the order.