
(1996) 04 AHC CK 0068

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 1489 of 1996

Mahandra Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 26-04-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 238, 239

Citation : (1996) 04 AHC CK 0068

Hon'ble Judges : C.A.Rahim, J

Final Decision : Disposed Of

Judgement

C. A. Rahim, J.—Heard learned counsel. The applicant has filed this application to quash the chargesheet dated 411996 and the entire proceeding in case No. 162 of 1994 pending in the Court of II Additional Chief Judicial Magistrate, Ghaziabad.

2. The allegation is that the complainant entrusted Rs. 50,000 to the applicant at Manu Steel Factory at noon on 1431994 for handing it over to their another factory at Ambala but the applicant did not hand over the money at Ambala Factory for which a first information report was lodged. After investigation a chargesheet under Section 406, I. P. C. has been framed.

3. The learned counsel has alleged the charge sheet on two grounds firstly, that the said money was handed over (returned) at the Hauz. Qazi, Head Office of the informant just after reaching there because of some confusion regarding the place and person to whom the said money had to be handed over.

4. In paragraph 9 it has been stated that the supplementary report called by the A. G. A. supports the contention of the applicant. Annexure 3 is the report dated 921995, wherein it has been stated that:

".....However, the I. O. recorded a supplementary report stating therein that the cash was handed over at Hauz Qazi at their head office. This supplementary statement carries no weight, as the first report is FIR and clearly stated therein, that the cash in question was handed over at Manu Steel, Bulandshabar Road,

Ghaziabad (U. P.)"

5. The interpretation of this paragraph made by the learned counsel is incorrect. The point was whether the money handed over to the accused applicant was at Hauz Qazi or at Mauu Steel, Bulendshahar Road, Ghaziabad. The said paragraph never meant that the cash was returned by the accused appellant to their Head Office at Hauz Qazi or at Manu Steel, Ghaziabad. The learned counsel has read a portion of the said paragraph and was in an illusion that the money had been returned back at Hauz Qazi but after reading the entire portion it does not indicate that the money was refunded but it indicates that it was handed over to the applicant. A contradictory report, appeared whether it was made even to an accused at Hauz Qazi or at Manu Steel, Ghaziabad. What was the actual place of making over of money to the accused applicant has been clearly stated by the complainant in the first information report. In any case the said paragraph does not make out any case in favour of the accused appellant. So the first contention fails.

6. The learned counsel has been submitted that the charge was framed on 411996 but no opportunity of hearing was given to the accused as required under Section 238, Cr. P. C. According to her when the learned Magistrate did not extend the right of hearing to the applicant, who was in jail at that time, the charge framed by him suffers from infirmity for which it should be struck down.

7. Section 239, Cr. P. C. makes out a provision that after considering the report and documents sent to the Magistrate under Section 173, Cr. P. C. and making such examination; if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate shall consider whether the charge against the accused to be groundless or it has been established. So it appears that an opportunity of hearing should be extended to the accused also, the chargesheet dated 411996 only speaks that the accused was present when charge was framed and 1711996 was fixed for taking evidence. No where it has been mentioned that any party including the accused was heard on that date. From the copy of the charge it appears that the charge was read over to the accused who pleaded not guilty. The learned A. G. A. has submitted that if there was any deficiency as required under Section 238, Cr. P. C. it has been cured when the charge was read over and explained to him who pleaded not guilty. He has also contended that at that time the accused did not take the plea that he must be given an audience to prove that it was groundless,

8. Section 239, Cr. P. C. does not envisage that prior to framing of the charge an accused has a right to place his case with regard to the alleged offence and the Magistrate must have given that opportunity to him to consider whether the charge has been established or the said charge is groundless. All these acts must be done prior to framing of the charge, in other words at a time when the Magistrate consider that the materials collected so far against the accused does not indicate that the charge is groundless on the other hand it indicates a prima

facie case.

9. Considering all these facts and circumstances I find that an opportunity of hearing should have been extended to the accused prior to framing of charge under Section 239, Cr. P. C. which is mandatory, violation of which will vitiate the charge so framed by the learned Magistrate.

10. The application is, therefore, allowed. The charge framed by the learned Magistrate on 411996 is hereby set aside. The learned Magistrate shall give an opportunity to both the sides to place the case before him in order to see whether any charge under Section 406, I. P. C., as alleged, can be framed or not. After hearing both the sides he will pass a reasoned order to that affect.

11. If the accused is in jail custody or on bail he shall be asked to produce on a date fixed by the learned Magistrate for the purpose of the aforesaid hearing.

12. I make it clear that by this order the accused has not been discharged. The learned Magistrate will proceed in the light of above observations according to the law.

13. With the aforesaid observations, the application is disposed of.