
(2004) 11 AHC CK 0236
In the Allahabad High Court
Case No : Criminal Revision No. 5088 of 2004

Malgode alias Malgodar and Others	Vs	APPELLANT
The State of U.P. and Nisar Ahmad		RESPONDENT

Date of Decision : 20-11-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155, 2, 311

Citation : (2004) 11 AHC CK 0236

Hon'ble Judges : Umeshwar Pandey, J

Bench : Single Bench

Advocate : K.A. Qayyum, for the Appellant; A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Umeshwar Pandey, J.—Heard the learned counsel for the revisionists and the learned A.G.A.

2. This revision has been directed against the order dated 28.09.2004 passed by the learned Additional Sessions Judge, Siddharth Nagar, permitting and opportunity to the prosecution to prove a first information report (NCR) and the related G.D. of the concerned police station under the provisions of Section 311 Cr.P.C.

3. As background facts of the case reveal this petition of prosecution (complainant) was moved before the court below on 13.7.2004 but no order was passed thereon by the Trial Judge and instead the kept it reserved for disposal after closure of the hearing of the case. The evidence of the prosecution as well as statement of the accused in the trial had been recorded and thereafter while hearing the parties during the final arguments, the court below found that the summoning of the concerned police station constable to prove the aforesaid documents was necessary for proper dispensation of justice in the case. This document is the first information report, which was lodged at the police station naming the deceased Ajaz Ahmed and others on the complainant's side as

accused in that case and which was registered as N.C.R. No. 143 of 1999 dated 04.12.1999. The accused had also moved a petition before the Chief Judicial Magistrate concerned vide their application dated 03.01.2000 for obtaining a direction to the police u/s 155/2 of the Cr.P.C. to investigate the whole matter. But the accused persons, while formulating their defence in this trial, have on the contrary totally denied the alleged incident and as such, the version of the accused which appears in their F.I.R. referred to above, was sought to be recorded by summoning those documents and by proving it through the Constable of the police station.

4. Learned counsel for the revisionists, while challenging the order passed by the Magistrate summoning the documents and the witness, contends that the prosecution at such a belated stage is not entitled to the indulgence of the court for the grant of such prayer and he has cited the following case laws in this context:

1. Abdul Aziz v. State of U.P. {1995 ACR 650}
2. Mir Mohd. Omar and Ors. v. State of West Bengal {1989 ACR 693 SC}
3. Kishan Pal and Anr. v. State of U.P. {1992 ACR 38 SC}

He has further argued that such a prayer otherwise also cannot be allowed under the provisions of Section 311 Cr.P.C. by the trial court.

5. As the facts of the case reveal there was some incident of Marpeet in which the accused persons are said to have caused serious injuries on the side of the complainant in which Ajaz Ahamad died subsequently. Earlier the case was registered as N.C.R. but after the death of Ajaz Ahmad this case was investigated and charge sheet was submitted against the revisionists-accused persons. The application u/s 311 Cr.P.C. moved by the complainants a prosecution discloses certain facts, which tend to reveal that there was a F.I.R. (N.C.R.) also from the side of the accused persons against the complainants and others. The accused-applicant-Abdul Kareem was also shown to have certain injuries on his body. The deceased Ajaz Ahmad was a named accused in that report and this N.C.R. was registered as No. 143 of 1999 which is prior to the N.C.R. No. 144 of 1999 which was given by the complainant-opposite party No. 2 Nisar Ahmad on the same day. These two reports one by the prosecution and other from the side of the accused-revisionists are so much interrelated with each other that the production of that report along with related G.D. which was lodged immediately before the report of the complainant would throw quite good deal of light upon the veracity of the version given from both sides. If the court below has preferred to pass an order summoning those documents and permitting its proof by a Constable of the Police Station, no fault with such order should be found either from the angle of the procedure adopted in the case or from any other legal angle. The aforesaid cases, as referred to by the learned counsel for the revisionists, though, formulate certain principles about the facts that undue liberty should not be given to the prosecution at a belated stage for recall of the witnesses or for

producing additional evidence by the prosecution under the provisions of Section 311 Cr.P.C., yet the facts of those cases are fully distinguishable from the facts of the present case. In fact, the documents sought to be summoned and proved before the court, are very relevant documents and as observed above those documents are capable of revealing the true picture of the case. The accused persons during the trial have totally denied the incident whereas the accused Abdul Kareem himself had lodged a cross F.I.R. at the police station narrating certain incident of Marpeet in which it is shown that the said Abdul Kareem had also sustained injuries upon his body in the incident. Thus, in the background of these facts, if the court below has passed the order to obtain and prove the aforesaid documents under the provisions of Section 311 Cr.P.C., no illegality in such order could be found out and any interference against it in this revision would be uncalled for.

6. The Revision having no force is hereby dismissed.