

(1989) 02 AHC CK 0072
In the Allahabad High Court
Case No : Criminal Misc. Case No. 96 of 1989

Muzaffar Abbas and Others	Vs	APPELLANT
State of Uttar Pradesh and Another		RESPONDENT

Date of Decision : 03-02-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 173(2), 173(3), 173(4), 173(5)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 304A

Citation : (1989) 2 AWC 1160

Hon'ble Judges : Rajeshwar Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajeshwar Singh, J.—This is an application u/s 482 Code of Criminal Procedure. The prayer made in the application are these:

That for the facts and reasons given in the accompanying affidavit, it is most respectfully prayed that this Hon"ble Court may be pleased to quash the subsequent charge-sheet under Sections 395/397 IPC submitted in the Court on 1-10-1988.

It is further prayed that this Hon"ble Court may be pleased to stay the arrest of the Petitioners and further be pleased to stay the proceeding pending in the court of Munsif-Magistrate, Sultanpur, which was earlier pending in the court of 1st Judicial Magistrate, Sultanpur in pursuance of Crime No. 216 of 1987, P.S. Dhammeur District Sultanpur.

2. It will be noticed that the first prayer is that subsequent charge-sheet submitted in the court by the police on 1-10-88 be quashed. This point will be examined shortly.

3. The second prayer is that arrest of the Petitioners and proceedings in the court of Magistrate be stayed. The stay cannot go on for all time to come. It can only

be for a limited period that is during the pendency of this application. If it is ultimately found that proceedings are illegal, they will be quashed. If no illegality is found, the stay if once granted will be vacated. Hence this prayer of stay appears to have been asked only as an interim measure and not as a final relief. This prayer as interim measure can be granted only if some substance is found in the first prayer and the petition is admitted. If no substance is found in the first prayer and the petition is not admitted, the question of granting second prayer does not arise.

4. So I revert to the first prayer of the applicant.

It seems that some first information report was filed and the applicants have not filed its copy with the application. However, it appears that one charge-sheet was filed in this case and it is annexure 2. From reading of this charge-sheet it appears that some allegations were believed and the charge-sheet was submitted under Sections 147, 148, 149, 323 and 325 IPC, but for an allegation of robbing some amount and articles sufficient evidence was not found and so this allegation of the first information report was not acted upon by the police.

5. Then argument of the applicant is that subsequently some witnesses filed affidavits before the Magistrate that the Investigating Officer did not make inquiry from them regarding the incident and by avoiding it he did not file charge-sheet for offence under Sections 395/397 IPC. The Magistrate sent copies of these affidavits to the police. Thereafter police submitted second charge-sheet which is also under Sections 395/397 IPC. From this charge-sheet it appears that firstly the offence as investigated by one Sub-Inspector and then Circle Officer entrusted investigation to another Sub-Inspector and he submitted charge-sheet under Sections 395/397 IPC. While doing so it was written on the first charge-sheet by the S.P. that it was being cancelled. The argument is that the second charge-sheet could not be submitted, the first could not be cancelled and no further investigation was made by the Investigating Officer.

6. Section 173 Code of Criminal Procedure provides for submission of charge-sheet on completion of investigation. Its Sub-section (8) runs as under:

Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed ; and the provisions of Sub-sections (2) to (6) shall, as far as may be apply in relation to such report or reports as they apply in relation to a report forwarded under Sub-section (2).

7. This shows that further investigation can be made even after a charge-sheet has been submitted and after this further investigation if the Investigating Officer considers necessary and he gets further evidence, he shall forward to the Magistrate a further report regarding such evidence in the prescribed form that is

in the form of charge-sheet.

8. This point also came before the Supreme Court in the case of Ram Lal Narang Vs. State (Delhi Administration), The head-note is to the following effect:

Notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted u/s 173 of the 1898 Code, the right of the police to further investigation is not exhausted and the police can exercise such right as often as necessary when fresh information comes to light. There was no provision in the Code of Criminal Procedure, 1898 which, expressly or by necessary implication barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate. Neither Section 173 nor Section 190 lead to say that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permits repeated investigations on discovery of fresh facts. Ram Gopal Neotia Vs. State of West Bengal, , overruled.

9. Thus it is clear that further investigation can be made even after submission of the charge-sheet. This can be done even without permission of the court but in this case implied permission of the court can also be inferred when affidavits were sent to the police. These affidavits were a sort of further evidence and if accepting them the second Investigating Officer prima facie found an offence under Sections 395/397 IPC then there is nothing basically wrong. The fact that Additional S.P. wrote on the first charge-sheet that it is cancelled, will merely be an irregularity and will not affect the merits of the case.

10. Hence the result is that the second charge-sheet cannot be quashed. Therefore, the first prayer goes. When the first prayer goes, the second prayer cannot be granted as an interim measure and the entire application u/s 482 Code of Criminal Procedure should be dismissed.

11. It was also submitted that after receipt of the second charge-sheet, the Magistrate had issued warrants against the applicants. But in this respect there is no prayer in this application and this hardly requires consideration. The case of Inder Pal Singh v. State of U.P. 1988 AWC 1385 was also referred. In this case some persons were granted bail, then a charge-sheet was submitted and some further offence was added. For that offence warrant was issued by the Magistrate. The Court said that there was no misuse of bail granted earlier and then it went on to say that:

I do not see any reason why the accused should be asked to be taken into custody all over again even though there is no allegation of abuse or misuse against them. True it is, that fresh bonds have to be filed, but the fact remains that unless there is a charge of abuse or misuse the accused should not be straightway taken into custody unless an opportunity to file fresh bonds is extended to them.

12. The court did not consider any provision of law. So it does not appear to have

laid down any principle of law. At best, it seems that in that particular case, the court did not think it proper that the court should issue warrants. But it was not held that the court cannot issue warrants.

13. Here I may give an instance. A driver of a truck over-runs a person and causes death. Taking it to be a negligent act covered by Section 304-A IPC providing for a maximum punishment of two years, bail is granted to the person; but then during investigation it comes to knowledge that the driver of the truck intentionally to cause death of the person on account of previous enmity overran the man and caused his death, then the offence will fall u/s 302 IPC. Then should in such a case a Magistrate be precluded from issuing warrant and should he be bound to keep the man on bail that has already been granted. I think it cannot be. Where previous bail was granted under some wrong impression of fact or finding of fact, the court cannot be prevented from taking action when fresh acts come to notice. So, this ruling will not be of much help to the applicant, specially when in the application u/s 482 Code of Criminal Procedure there is no prayer against the warrants issued by the Magistrate except as an interim measure and interim relief cannot be allowed when final relief is being refused.

14. The application u/s 482 Code of Criminal Procedure is dismissed.