

(2009) 07 AHC CK 0357
In the Allahabad High Court
Case No : Criminal M. A. No. 8362 of 2009

Narendra Singh Bhadoriya

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 14-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 195, 482
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 18, 20
Penal Code, 1860 (IPC) — Section 120B, 166, 167, 182, 195

Citation : (2009) 3 ACR 3201

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Advocate : Dharmendra Singhal, for the Appellant; A.K. Dwivedi, A.G.A., for the Respondent

Judgement

Vinod Prasad, J.—Narendra Singh Bhadoriya, the applicant, who is Sub-Inspector of Police, has approached this Court u/s 482, Cr. P.C., through instant criminal misc. application, with the prayer that the impugned order dated 10.2.2009, passed by Additional Sessions Judge/Special Judge (N.D.P.S.) Act, Court No. 8, Meerut, in Case No. 83 of 2007, State v. Narendra Singh Bhadoriya Case No. 83 of 2007, under Sections 166, 167, 195, 220, 323, 344, 504, 506 and 120B, I.P.C., read with Section 18/20 of N.D.P.S. Act, P.S. Delhi Gate, district Meerut be quashed. By the impugned order trial Judge has rejected the discharge application of the applicant in the aforesaid offences.

2. In the bird eye view, as are mentioned in the affidavit appended alongwith this criminal miscellaneous application, brief facts are that the applicant alongwith two other constables Shyoraj Singh and C.P. 315 Chob Singh arrested Rahul Maheshwari alias Rinkoo on 11.7.1999, under the N.D.P.S. Act. On the basis of the recovery made from the possession of the aforesaid person, F.I.R. of Crime No. 229/09, u/s 18/20 of N.D.P.S. Act, was registered vide Annexure-1, to this criminal miscellaneous application. According to the F.I.R. version, 200 grams of charas was alleged to have been recovered from the possession of aforesaid

Rahul Maheshwari alias Rinkoo, on 11.7.1999, at 6.30 p.m. near Iqbal market, in front of the Buniyad Dry Cleaners Shop. The recovery was made by the present applicant, Sub-Inspector Narendra Singh Bhadoria, who was on a picket duty at that moment alongwith Constable 315 Chob Singh and Constable Shyoraj Singh. During the investigation of the said F.I.R., statement of the applicant u/s 161, Cr. P.C., was recorded vide Annexure-2 to the affidavit appended alongwith this criminal misc. application, in which he has supported his version of arrest of Rahul Maheshwari alias Rinkoo alongwith the seized narcotic contraband. Constable Shyoraj Singh in his Section 161, Cr. P.C. statement has also supported the factum of arrest of the aforesaid accused.

3. It seems that the family member of Rahul Maheshwari were convinced that the police had falsely implicated Rahul Maheshwai in the fake recovery of the narcotic substance, vide Annexure-1, to the affidavit appended alongwith this application, that they moved an application on the basis of which, the investigation of the said crime was transferred to C.B.C.I.D. vide order dated 14.8.1999, Annexure-3 to the affidavit, appended alongwith this criminal misc. application. It is averred by the applicant in his affidavit that the C.B.C.I.D. concluded the said investigation and submitted Charge-Sheet No. 35A against the applicant in the above mentioned offences vide Annexure-4 to the affidavit filed alongwith this criminal misc. application.

4. It transpires that after submission of the charge-sheet, a final report was submitted by the C.B.C.I.D, in the arrest case made by the applicant and hence the applicant had filed a protest petition, vide Annexure-7, which is still pending consideration before the competent court.

5. However, since the charge-sheet was filed against the applicant, he filed a discharge application, Annexure-8, to the affidavit appended with this criminal misc. application, before the Court of Special Judge, N.D.P.S. Act, Meerut in the concerned Case No. 83 of 07, State v. Narendra Singh Bhadoriya Case No. 83 of 07.

6. The discharge application filed by the applicant has been rejected by the trial Judge, by passing the impugned order dated 10.2.2009, which order has been challenged by the applicant Sub-Inspector in the instant criminal misc. application.

7. I have heard Sri Dharmendra Singhal, learned Counsel in support of this application and learned A.G.A. in opposition and have gone through the record of this case.

8. It was argued by Sri Dharmendra Singhal, learned Counsel for the applicant that in this case, all the witnesses, who have deposed against the applicant are related, partisan and inimical witnesses and there is no independent witness who had come forward to support the charge of false implication and therefore, there was dearth of evidence before the trial Judge who wrongly reject the discharge application of the applicant. It was further argued that even during C.B.C.I.D.

investigation, witnesses of recovery of narcotic contraband Shyoraj Singh and Chob Singh, besides the applicant, have fully supported the factum of recovery. In support of the said contention, learned Counsel for the applicant relied upon Annexures-5 and 6 to the affidavit filed in support of this application. Learned Counsel further submitted that before the C.B.C.I.D., there were two different versions and why C.B.C.I.D. rejected the case of the applicant and accepted the version of the arrested accused is not spelt out by it and therefore, discharge application of the applicant should not have been rejected by the trial Judge. Learned Counsel further submitted that applicant had filed a protest petition, as report submitted by C.B.C.I.D. is a deemed final report in respect of the arrest and F.I.R. lodged by the applicant, which protest petition is still pending consideration before the trial Judge and therefore rejection of discharge application filed by the applicant is bad in law, It was further submitted that the investigation conducted by C.B.C.I.D. was mala fide, and therefore, the applicant should have been discharged.

9. Learned A.G.A. on the other hand submitted that the applicant being a police personnel, illegally sided with the parents of one Sweta who was the beloved of Rahul Maheshwari and to show illegal favour to them, that the applicant had falsely implicated Rahul Maheshwari in a fake incident of recovery of narcotic contraband vide Annexure-1, which crime was deciphered by C.B.C.I.D. in its investigation and therefore, the applicant has been rightly charge-sheeted. It was further submitted that the protest petition filed by the applicant shall be decided by the Court keeping in view the report submitted by the C.B.C.I.D., but since charge-sheet has been submitted against the applicant containing sufficient material against the applicant in the case diary for falsely implicating Rahul Maheshwari, therefore, the trial Judge rightly rejected the discharge application of the applicant. It was further submitted by the learned A.G.A. that implicating a person falsely is also a crime u/s 182, I.P.C. It was also submitted that the act of police personnel in falsely implicating an innocent person in a fake recovery case, is not protected u/s 195, Cr. P.C., as it was not the legal duty of an officer of police force to cook up a false case and falsely implicate innocent person and hence this criminal misc. application is bereft of merits and deserves to be dismissed.

10. I have considered the submissions raised by both the sides.

11. The applicant has approached this Court for setting aside the order dated 10.2.2009, by which his discharge application has been rejected by Additional Sessions Judge/Special Judge (N.D.P.S. Act), Court No. 8, Meerut. The grievance of the applicant is that there was no material against him and in any view there were contradictory evidences on record and therefore he should have been discharged.

12. The submissions raised by the learned Counsel for the applicant not appealing. First of all the applicant has not filed evidences, collected against him by the C.B.C.I.D., alongwith this application. Those were the incriminating

materials contained in the case diary submitted against the applicant. They are relevant and germane for deciding the prayer made by the applicant in this application. In absence of those materials, contentions raised by learned Counsel for the applicant cannot be accepted at all.

13. Further, if there is evidence available on the record, which prima facie discloses commission of cognizable triable offences, then at the stage of framing of charge, the trial Judge is bound to frame the charges. At that stage, accused can be discharged, only when there is no material against him at all not even grave suspicion. It has been settled by a catena of decisions by this Court and also by the Apex Court that even if there is grave suspicion arising out of materials collected in case diary, even then the charges has to be framed.

14. In the present case according to the version of the applicant himself, there are evidences of Rahul Maheshwari and his witness available in the case diary against the applicant of falsely implicating him. In such a view it cannot be said that the impugned order suffers from any illegality.

15. There is yet another reason for not accepting the contentions of learned Counsel for the applicant and that is that the arrest made by the applicant was investigated by the C.B.C.I.D. The arrest and the recovery were found to be fake and cooked up to help the parents of Sweta, of whom the arrested accused Rahul Maheshwari was a paramour. C.B.C.I.D. concluded that arrested accused was falsely implicated. Whether the arrest is genuine or fake has to be decided by the Court of competent jurisdiction after affording proper opportunity to the prosecution. Investigation conducted by the C.B.C.I.D. cannot be scuttled by looking into the defence of the accused. The Investigating Officer of C.B.C.I.D. and the victim Rahul Maheshwari must be offered an opportunity to substantiate their charge that the act of the applicant was wholly illegal, mala fide and he had falsely implicated Rahul Maheshwari in a fake recovery incident under the N.D.P.S. Act. For the purpose of deciding this issue both the sides must be allowed to lead evidence in a proper trial. Moreover, at present, the fact that the recovered contraband was a narcotic is totally immaterial. It is unexpected from a Sub-Inspector of Police that without getting genuine narcotic he will cook up a false case. Various judgments have been relied upon by the trial Judge in support of his reasoning that at the stage of framing of charge only a prima facie case has to be seen and only this much is to be looked into as to whether there is ground for presuming that the accused has committed an offence or not. In the present case the evidences were there for such a presumption that the applicant had committed offence charged against him, and therefore, rejection of discharge prayer of the applicant cannot be said to be illegal. I am fortified in my above view by a latest pronouncement by the Apex Court in Hem Chand Vs. State of Jharkhand, wherein the Apex Court has held as under:

12. The learned Counsel for the C.B.I. is, thus, correct in his submission that what has been refused to be looked into by the learned Special Judge related the documents filed by the Appellant alongwith his application for discharge.

The Court at the stage of framing charge exercises a limited jurisdiction. It would only have to see as to whether a prima facie case has been made out. Whether a case of probable conviction for commission of an offence has been made out on the basis of the materials found during investigation should be the concern of the Court. It, at that stage, would not delve deep into the matter for the purpose of appreciation of evidence. It would ordinarily not consider as to whether the accused would be able to establish his defence, if any.

In State of Madhya Pradesh Vs. Mohanlal Soni, this Court has held ;

7. The crystallised judicial view is that at the stage of framing charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

It was furthermore observed:

... As is evident from the paragraph extracted above if the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. Per contra, if the evidence which the prosecution proposes to produce to prove the guilt of the accused, even if fully accepted before it is challenged by the cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the particular offence then the charge can be quashed.

We agree with the said view.

16. From the above discussion I do not find any merit in this application which stands dismissed.