
(2009) 04 AHC CK 0024

In the Allahabad High Court

Case No : Criminal M. A. No. 3211 of 2000

Nathmal Sharma and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 10-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(3), 200, 202, 482
Penal Code, 1860 (IPC) — Section 307, 504, 506

Citation : (2009) 3 ACR 2785

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Advocate : B.B. Jauhari, for the Appellant; Prakash Gupta, R.S. Shukla and Deepak Kumar Srivastava and A.G.A., for the Respondent

Judgement

Ravindra Singh, J.—This application u/s 482, Cr. P.C. has been filed by the applicants Nathmal Sharma, Bijay Kumar Sharma, Jagdish Sharma and Ram Bilas Agrawal with a prayer to quash the complaint dated 30.1.1999 filed by O. P. No. 2, Ram Kishore and the summoning order dated 11.1.2000 passed by the learned Chief Judicial Magistrate, Shahjahanpur in Criminal Complaint No. 9845 of 1999, Ram Kishore v. Nathmal Sharma and others, under Sections 307, 504 and 506, I.P.C.

2. The facts in brief are that O. P. No. 2 Raj Kishore filed a complaint dated 30.11.1999 in the court of learned Chief Judicial Magistrate, Shahjahanpur, thereafter the statement of the witnesses under Sections 200 and 202, Cr. P.C. was recorded by the learned Magistrate concerned, after considering the same alongwith the complaint, the learned Magistrate concerned has taken cognizance and summoned the applicants to face the trial for the offence punishable under Sections 307, 504 and 508, I.P.C. vide order dated 11.1.2000, being aggrieved from the order dated 11.1.2000, passed by the learned Chief Judicial Magistrate, Shahjahanpur in complaint case No. 9845 of 1999, the applicants have filed the present application to quash the proceedings of complaint case as well as the

summoning order dated 11.1.2000, passed by the learned Chief Judicial Magistrate, Shahjahanpur by way of invoking the power conferred u/s 482, Cr. P.C.

3. Heard Sri B. B. Jauhari, learned Counsel for the applicants, learned A.G.A. for the State of U. P. and Sri D. K. Srivastava, learned Counsel for O. P. No. 2.

4. It is contended by the learned Counsel for the applicants that it has been alleged in the complaint dated 30.11.1999 that the complainants (O. P. No. 2) is a Commission Agent and businessman of food grains, at Shahjahanpur, he was having business relationship with the applicants Nathmal Sharma and Bijay Kumar Sharma, thereafter the business was closed on account of some irregularity in payment, the complainant was persuaded by the above mentioned applicants to continue the business but he refused, thereafter on 12.12.1997 at about 11.00 a.m. the complainant was going to his counsel's chamber in respect of the preparation of a case, on way, he was surrounded by the applicants near the Nagar Palika building, threatening of the life was given to him and he was pressurised to continue of the business but the complainant was not ready to have the business relationship, then the applicant Bijay Kumar Sharma took out the country made pistol from his pocket and aimed towards him for the purpose of committing the murder of the complainant, then the applicant Nathmal Sharma asked him to commit his murder so that he may not be able to do the business, in the meantime the witnesses Naim and Ramesh came there, who challenged the accused persons, then the complainant successfully escaped from the place of occurrence to save his life. The applicants are the close associates, they came to Shahjahanpur for the purpose of business, all above allegations made against the applicants are false, frivolous and baseless, even no such incident has occurred as alleged by O.P. No. 2 and all the applicants never came to Shahjahanpur.

5. It is further contended that the applicants are resident of the State of West Bengal, they are not resident of district Shahjahanpur, they are residing at a distance of about 1500 km. from Shahjahanpur. It is admitted by the complainant that he was having business relationship with applicant Nos. 1 and 2, and the allegations have been made against the applicant Nos. 1 and 2, no allegation has been made against the applicant Nos. 3 and 4, according to the complainant itself there was a dispute between the complainant and the applicant Nos. 1 and 2 with regard to their business, a complaint has been lodged for the purpose of harassment of the applicants due to ulterior motive for wreaking vengeance, the complaint is full of mala fide, the applicants never visited to Shahjahanpur, the complaint is containing several improbabilities having such magnitude it is difficult to believe the version contained therein, rather it is a case in which no offence u/s 307, I.P.C. is made out because no firing has been done, it is alleged that the applicant Bijay Kumar Sharma took out a country made pistol from his pocket, he has aimed for the purpose of committing the murder of the complainant, the role of exhortation is assigned to

the applicant Nathmal Sharma, it is surprising that even then no firing was done by the applicant Bijay Kumar Sharma, no case punishable u/s 307, I.P.C. is made out, the complaint itself is too much delayed, it has been lodged on 30.11.1999 in respect of the incident, which has been allegedly occurred on 12.12.1997, it has been lodged after two years of the alleged incident, the complainant has not lodged any F.I.R. etc. even he has not approached the higher authority of the police also, which shows that the complainant has lodged the complaint on the basis of false and frivolous allegation so that the applicants may be harassed but the learned Chief Judicial Magistrate, Shahjahanpur has taken cognizance and summoned the applicants to face the trial for the offence punishable under Sections 307, 504 and 506, I.P.C. in a mechanical manner without applying the judicial mind, by the order dated 11.1.2002 even it is not a reasoned order. The allegations made in the complaint do not disclose the commission of the offence u/s 307, I.P.C. even then the applicants have been summoned to face the trial for the offence punishable u/s 307, I.P.C. The prosecution of the applicants is simply the abuse of the process of the Court.

6. It is further contended that applicants No. 1 and 2 are doing business of General Merchant and Commission Agent in the name and style of M/s. Nathmal Sharma and Bijay Kumar at Asansol district Burdwan (W.B.), they have purchased 152 bags of Khandsari sugar through Bill No. 51 dated 31.12.1996 from M/s. J.D.T. Sugar, Tehsil Maksudpur in which applicant No. 2 was the commission agent, the order was placed on telephone, the cost of the above mentioned sugar was Rs. 8,58,000, its payment was made by the applicants 1 and 2 through D.D. No. 72/487-890, dated 13.1.1997, thereafter the applicants 1 and 2 received telephonic call from O. P. No. 2, his father Kishandas and his brother Sudhir Kumar to make further payment of Rs. 11,064 otherwise they would be kidnapped, then applicant No. 1 made a written complaint to the Officer in-charge of Asansol on 9.2.1997, thereafter, applicant No. 1 received one registered letter dated 17.2.1997 from Respondent No. 2, the letter was containing threats, then the applicants moved an application u/s 156(3), Cr. P.C. against O. P. No. 2, his father Kishandas and his brother Sudhir Kumar, the same was allowed by the learned Additional Judicial Magistrate, Asansol on 19.3.1997 and officer-in-charge of P.S. Asansol was directed to register the case and investigate the same, pursuant to that order Criminal Case No. 72 of 1997 was registered against O. P. No. 2 and his father and brother u/s 384, I.P.C. in that case applicant Nos. 3 and 4 were witness but the proceedings of Case No. 72 of 1997 was stayed by the Calcutta High Court in Criminal Revision No. 2901 of 1997 vide order dated 23.3.1997, in its counter blast the complaint of the present case has been filed at Shahjahanpur, which is based on false and frivolous allegation so that the applicants may be harassed, the complaint was lodged by O. P. No. 2 is simple misuse of the processes of the Court, which has been lodged for the purpose of harassment of the applicant after more than two years of the alleged incident. The allegations are of such nature which may not be believed at all. The learned Chief Judicial Magistrate, Shahjahanpur has not

applied his judicial mind and a mechanical manner, he has summoned the applicants vide order dated 11.1.2000 for the offence punishable under Sections 307, 504 and 506, I.P.C. whereas the allegation made in the complaint and the statement recorded under Sections 200 and 202, Cr. P.C. are not disclosing the commission of the offence punishable u/s 307, I.P.C. The impugned order dated 1.11.2002 is not a reasoned order, it is liable to be set aside.

7. In reply to the above contention, it is submitted by the learned A.G.A. and the learned Counsel for O. P. No. 2 that the allegation made against the applicants are disclosing the commission of the offence punishable under Sections 307, 504 and 506, I.P.C. the delay in lodging the complaint is not material the learned Magistrate concerned has not committed any error in passing the impugned order dated 11.1.2000, the complaint as well as the impugned order dated 11.1.2000 is not suffering from any illegality or irregularity. The present application is devoid of merits, the same may be dismissed.

8. Considering the submissions made by the learned Counsel for the applicants, learned A.G.A. for the State of U. P. the counsel appearing on behalf of O. P. No. 2 and from the perusal of the record it appears that applicant Nos. 1 and 2 were having business relationship with O. P. No. 2, thereafter, the same dispute arose between the parties, the allegation of extending the threat by O.P. No. 2 has been made in an application u/s 156(3), Cr. P.C. filed by applicant No. 1 in the court of learned Additional Chief Judicial Magistrate, Asansol, the same was allowed by the learned Magistrate concerned on 19.3.1997 whereby the officer-in-charge of the P.S. Asansol was directed to register a case and investigate the same, in pursuance of that order, Criminal Case No. 72 of 1997, was registered against O.P. No. 2 his father and brother u/s 384, I.P.C. in that case applicant Nos. 3 and 4 were witnesses but the proceedings of the above mentioned case were stayed by Calcutta High Court in Criminal Revision No. 2901 of 1997 vide order dated 23.3.1997. The applicants are resident of West Bengal, the complaint of this case has been filed on 30.11.1999, the complaint is in respect of the alleged incident dated 12.12.1997, which is too much delayed the allegation of firing has not been made in the complaint, simply it is alleged that the applicant Bijay Kumar Sharma, took out the country made pistol for the purpose of committing the murder of O. P. No. 2, in this case nobody has sustained any injury, the complaint is delayed for more than two years, considering the back ground of this case, a positive inference must be drawn that the complaint dated 30.11.1999 has been lodged for the purpose of harassment of the applicants with ulterior motive to wreak vengeance. It is a case in which it may be observed that the complaint has been lodged for the purpose of harassment because the allegation made against the applicants are absurd and the criminal proceedings are maliciously instituted with ulterior motive for wreaking vengeance so that the applicant may be harassed because they are resident of West Bengal.

9. From the perusal of the impugned order dated 11.1.2000 it appears that the

learned C.J.M., Shahjahanpur has not applied his judicial mind, it has been passed in a mechanical manner without considering the allegations because even on the basis of the allegations, no offence u/s 307, I.P.C. is made out whereas the applicants have been summoned to face the trial u/s 307, I.P.C. also. The impugned order dated 11.1.2000 is also illegal.

10. In view of the above discussion, the proceedings of Criminal Complaint Case No. 9845 of 1999, Raj Kishore v. Nathmal Sharma and others under Sections 307, 504 and 506, I.P.C. pending in the court of learned C.J.M., Shahjahanpur arising out of the complaint dated 30.1.1999 including the impugned order dated 11.1.2000, passed by the learned Chief Judicial Magistrate, Shahjahanpur are hereby quashed.

Accordingly this application is allowed.