

(2008) 09 AHC CK 0024
In the Allahabad High Court
Case No : Criminal M. A. No. 24072 of 2008

Om Prakash Upadhyay and Others

APPELLANT

Vs

State of U. P. and Another

RESPONDENT

Date of Decision : 19-09-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 313, 482
Penal Code, 1860 (IPC) — Section 120B, 408, 409, 419, 420

Citation : (2009) 2 ACR 1307 : (2008) 105 RD 58

Hon'ble Judges : Ravindra Singh, J

Bench : Single Bench

Advocate : G.S. Chaturvedi and Shishir Tandon, for the Appellant; R.N. Sharma, A.K. Sharma and A.G.A., for the Respondent

Judgement

Ravindra Singh, J.—Heard Sri G. S. Chaturvedi, learned senior advocate assisted by Sri Shishir Tandon, learned Counsel for the applicant, learned A.G.A. for the State of U. P. and Sri A. K. Sharma, learned Counsel for O. P. No. 2.

2. This application has been filed with a prayer to quash the order dated 25.8.2008, passed by learned C.J.M., Basti in Case No. 1754 of 2000 whereby the applications filed by the applicants with a prayer that the P.W. Sub-Inspector, Mr. Upendra Nath Rai may be directed to give reply in respect of the supplementary parcha No. 12 dated 20.11.1998 after perusing the original case diary in cross-examination and the applicant may be directed to give a proper reply after perusing the case diary to a question relating to the endorsement made by the Investigating Officer in supplementary parcha No. 11 where it has been mentioned that there was no sufficient evidence against the applicants, therefore, the charge-sheet No. 43A of 1996 may be quashed have been rejected by learned C.J.M., Basti and date for recording the statement of the accused u/s 313, Cr. P.C. has been filed and order dated 25.8.2008, passed by learned C.J.M., Basti in Criminal Case No. 1754 of 2000 whereby the application for summoning the Investigating Officer Prabhakar Mishra as a witness has been rejected.

3. It is contended by learned Counsel for the applicants that in the present case the applicants are facing the trial for the offences punishable under Sections 419, 420, 467, 408, 409 and 120B, I.P.C. pending in the Court of learned C.J.M., Basti vide Criminal Case No. 1754 of 2000. In this case the F.I.R. was lodged in pursuance of the order passed by learned C.J.M. concerned on the application moved by O.P. No. 2 u/s 156 (3), Cr. P.C. after lodging the F.I.R. the matter was entrusted to Sri Baij Nath Rai for investigation. Thereafter the second Investigating Officer was Jiledar Giri took the investigation in his hands who recorded the statement of Maya Prasad, Bhagwati, Mukteshwar Prasad and submitted the charge-sheet dated 4.4.1997 against Smt. Manohar Singh the then Principal of Maharshi Vidya Mandir thereafter III Investigating Officer Sri Upendra Rai was appointed to investigate the case who interrogated Principal Smt. Manohar Singh regarding the addresses of accused persons. The III Investigating Officer further asked for legal opinion to S.P.O. for submitting the charge-sheet against the applicants but the same was replied by S.P.O. stating therein that once the charge-sheet has been submitted against one co-accused the same may be submitted against other co-accused also, therefore, the charge-sheet may be submitted against remaining accused also. After obtaining the legal information the IV Investigating Officer submitted the charge-sheet on 7.4.1998 as mentioned in parcha, No. 10, thereafter the S.P.O. sent his reply to the III Investigating Officer stating therein that no offence is made out against the applicants, it's endorsement has also been made by the Investigating Officer in supplementary parcha thereafter the Circle Officer has sent a letter to the Investigating Officer for doing the further investigation and to complete the same within 15 days. The further investigation was done by the IV Investigating Officer Sri Prabhakar Mishra who recorded the statement of some witnesses and inspected the records and made an endorsement in the case diary that no offence is made out against the applicants, in such circumstances the investigation agencies were not of the same information regarding the commission of the offence. There was a difference of opinion of the Investigating Officers, at the stage of the trial the fact that the endorsement was made in the case diary that no offence was made out against the applicants made also be brought on the record by way of examination of IV Investigating Officer Sri Prabhakar Mishra and it was necessarily required for the just decision of the case to give the proper reply by the witness Upendra Nath Rai in his cross-examination because the witness Upendra Nath Rai had not given the proper reply of this question and he avoided to reply. The specific question whether the endorsement made in the supplementary parcha that no offence was made out and charge-sheet submitted earlier may be quashed. In case such queries are not properly replied the trial court come on the right conclusion for the just decision of the case for the same it is expedient in the interest of justice that witness Upendra Nath Rai, S.I. may be directed to give proper reply after perusing the supplementary parcha Nos. 11 and 12 of the case diary and the IV Investigating Officer Sri Prabhakar Mishra may also be summoned for recording his statement.

4. In reply of the above contention, it is submitted by learned A.G.A. and counsel for O. P. No. 2 that in the present case for the purpose of lingering on the trial the applications were moved by the applicants mentioning therein that the witness Upendra Nath Rai may be directed to give the proper reply after perusing the supplementary parcha Nos. 11 and 12 of the case diary in which it was mentioned that there was no sufficient evidence against the applicant and the charge-sheet was submitted against the applicants may be quashed. The entries made in the case diary are not supposed to norm to the applicants, it's copy cannot be issued it can be perused by the Court only for the purpose of just decision of the case. In such circumstances the witness Upendra Nath Rai who had not made the endorsement of the supplementary parcha of the case diary after submission of the charge-sheet and he cannot be compelled to give reply of such questions after perusing the original case diary further the IV Investigating Officer Prabhakar Mishra may be summoned as prosecution witness because no investigation was done by him before submission of the charge-sheet, after submission of the charge-sheet he had done further investigation on which the prosecution was not relying upon, therefore, such Investigating Officer may not be summoned as P.W.

5. It is further contended that in the present case such type of applications was given prior to moving the applications which have been decided by the impugned orders but the same was rejected and the revisional court has also upheld the order of rejection on such application. It is further contended that the evidence of witness Upendra Nath Rai was closed and there was no need to summon the witness Upendra Nath Rai for further cross-examination. From the side of the accused persons one another application was also moved to summon the other Investigating Officers Baij Nath Rai and Jiledar Giri, the same was rightly rejected by the trial court. In the present case on behalf of applicant Rajesh Kumar Tiwari and Girish Verma the Criminal Misc. Application No. 8148 of 2003 was moved before this Court the same was disposed of by another Bench of this Court on 4.3.2004. The order dated 4.3.2004 was challenged by applicants Rajesh Kumar Tiwari, Girish Verma and S. P.

Bakshi before the Supreme Court of India by way of filing petition of Special Leave to Appeal (Criminal) No. 2640 of 2004 with Criminal Misc. Petition No. 6196 of 2004, the same was dismissed on 15.4.2005. There is no illegality in the impugned order dated 19.8.2008 and 25.8.2008. The present petition has been filed for the purpose of delaying the proceedings of the trial. It is devoid of merits, the same may be dismissed.

6. Considering the facts and circumstances of the case and submission made by learned Counsel for the applicant and learned A.G.A., counsel for O.P. No. 2 and from the perusal of the record it appears that in the present case the applications have been filed by the applicants with a prayer to direct the P.W. Upendra Nath Rai to give the proper reply after perusing the original case diary specifically it's parcha Nos. 11 and 12 in which it has been mentioned that there was no

sufficient evidence against the applicant for submitting the charge-sheet. The charge-sheet submitted earlier against the applicants may be quashed and the IV Investigating Officer, S.I. Prabhakar Mishra may be summoned as P.W. of this case. The learned trial court has rejected such applications, the impugned order 19.8.2008 and 25.8.2008 are well reasoned orders. It also appears that in the present case charge-sheet was submitted against the applicants by the III Investigating Officer Sri Upendra Nath Rai, he was cross-examined on the question that he had made an endorsement in supplementary parcha No. 11 that there was no sufficient evidence against the applicants. The charge-sheet submitted against the co-accused persons may be quashed. The learned trial court has not committed any error in rejecting such application because parchas of the case diary including the supplementary parcha Nos. 11 and 12 were not supplied to the applicants. It's copies cannot be issued. The applicants are supposed to know the entries made in the parchas of the case diary and a witness cannot be compelled to give the reply in the manner as choosed by the witness. The learned trial court has not committed any error in rejecting the application for summoning the IV Investigating Officer Sri Prabhakar Mishra who had done the investigation after submission of the which charge-sheet was properly rejected by the trial court because the prosecution cannot be compelled to summon the persons on which the prosecution is not relying upon even according to the application moved by the applicants the IV Investigating Officer Sri Prabhakar Mishra had given the information in favour of the accused persons. Such person cannot be summoned as prosecution witness. The learned trial court has not committed any error in rejecting such application. The impugned orders passed by learned C.J.M., Basti are not suffering from any illegality or irregularity, therefore, the prayer for quashing the same is refused.

Accordingly, this application is rejected.